

## Exhibit 14

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

KIMBERLEE WILLIAMS, et al., :  
Plaintiffs, : Civil Action No.  
v. : 11-1754 (JLL) (JAD)  
BASF CATALYSTS LLC, et al., :  
Defendants. :

Video Deposition of DANIEL STEINMETZ,  
30(b)(6) designee of BASF CATALYSTS LLC

Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C.

Wednesday, June 6, 2018  
10:05 a.m.

Reported by:  
Adam D. Miller  
Registered Professional Reporter  
Job no. 408210

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1 (Steinmetz Exhibit 10 and Exhibit  
2 11 were premarked for identification.)

3 THE VIDEOGRAPHER: We are now on  
4 the record. This is begins DVD No. 1  
5 in the deposition of Daniel Steinmetz,  
6 in the matter of Kimberlee Williams,  
7 et al., versus BASF Catalysts, LLC, et  
8 al., in the United States District  
9 Court in the District of New Jersey,  
10 Civil Action No. 11-1754.

11 Today is June 6th, 2018, and the  
12 time is 10:05 a.m. This deposition is  
13 being taken at 655 15th Street,  
14 Northwest, Washington, DC, at the  
15 request of Cohen, Placitella & Roth.

16 The videographer is Ray Moore of  
17 Magna Legal Services, and the court  
18 reporter is Adam Miller of Magna Legal  
19 Services.

20 Will counsel and all parties  
21 present state their appearances and  
22 whom they represent.

23 MR. PLACITELLA: Chris Placitella  
24 on behalf of plaintiff. Good morning.  
25 Nice to see you again.

1 THE WITNESS: Good morning.

2 MR. COREN: Hi. Nice to see you  
3 again, Mr. Steinmetz.

4 Mike Coren on behalf of  
5 plaintiffs.

6 MR. FARRELL: Peter Farrell of  
7 Kirkland & Ellis on behalf of  
8 Defendant BASF.

9 MS. DALMUT: Elizabeth Dalmut,  
10 Kirkland & Ellis, on behalf of BASF.

11 MR. BOISE: Good morning.  
12 Barry Boise on behalf of the Cahill  
13 defendants.

14 MS. SMITH: Sarah Smith on behalf  
15 of BASF.

16 THE VIDEOGRAPHER: On the phone?

17 MR. BOYLE: Hi. John Boyle of  
18 Marino, Tortorella & Boyle on behalf  
19 of Defendant Arthur Dornbusch. And  
20 just to avoid interrupting, I'm  
21 joining in all objections during the  
22 deposition.

23 MR. PLACITELLA: How do you know  
24 there's going to be any?

25 MR. BOISE: Objection.

1                   MR. BOYLE: The past is prologue,  
2                   I think.

3                   THE VIDEOGRAPHER: Please  
4                   proceed.

5                   - - - - -

6                   DANIEL STEINMETZ, having first  
7                   been duly sworn according to law, was  
8                   examined and testified as follows:

9                   - - - - -

10                   EXAMINATION

11                   BY MR. PLACITELLA:

12                   Q. Good morning, Mr. Steinmetz. How  
13                   are you? Nice to see you again.

14                   A. I'm fine. Good to see you.

15                   Q. Where do you currently live?

16                   A. I live in Bloomfield Hills,  
17                   Michigan.

18                   Q. And who do you currently work  
19                   for?

20                   A. I'm retired, but I work as a  
21                   consultant to BASF Catalysts.

22                   Q. Okay. Do you work for anybody  
23                   other than BASF Catalysts?

24                   A. No, I don't.

25                   Q. And do you work for any -- for

1 BASF in any capacity other than as a  
2 corporate representative in a talc  
3 litigation?

4 MR. FARRELL: Objection to form.

5 THE WITNESS: I don't currently.

6 A couple of years ago I did a little  
7 bit of other work for other  
8 departments within BASF, but I don't  
9 anymore.

10 BY MR. PLACITELLA:

11 Q. So your sole job right now is to  
12 appear as a corporate representative for  
13 BASF in a talc litigation; correct?

14 MR. FARRELL: Objection to form  
15 and foundation.

16 THE WITNESS: Yes, generally.

17 BY MR. PLACITELLA:

18 Q. But you never when you were at  
19 BASF had anything to do with talc; correct?

20 A. That's correct.

21 Q. And you are being paid to be a  
22 corporate witness; correct?

23 MR. FARRELL: Objection to form  
24 and foundation.

25 THE WITNESS: Yes.

1 BY MR. PLACITELLA:

2 Q. Okay. Do you know whether  
3 there's anybody at BASF or Engelhard who  
4 actually worked on the talc litigation that  
5 would know more than you that could testify  
6 today?

7 MR. FARRELL: Objection to form  
8 and foundation.

9 THE WITNESS: In the topics that  
10 I'm covering, I don't know of anybody,  
11 no.

12 BY MR. PLACITELLA:

13 Q. Okay. And how much are you being  
14 paid?

15 MR. FARRELL: Objection to form.

16 THE WITNESS: \$250 an hour.

17 BY MR. PLACITELLA:

18 Q. And how much have you made so far  
19 as a corporate representative for BASF in  
20 talc litigation?

21 MR. FARRELL: Objection to form.

22 THE WITNESS: In this year or --

23 BY MR. PLACITELLA:

24 Q. Total.

25 A. Total over -- excuse me -- over

1 the last three years, it's probably sixty to  
2 seventy thousand dollars.

3 Q. Okay. And you are here today to  
4 speak on behalf of the corporation; correct?

5 MR. FARRELL: Objection to form.

6 THE WITNESS: Yes.

7 BY MR. PLACITELLA:

8 Q. Okay. And you understand that  
9 what you say here today will bind the  
10 corporation at the time of trial?

11 MR. FARRELL: Objection to form  
12 and foundation.

13 THE WITNESS: I'm not a lawyer  
14 and I don't understand all the legal  
15 implications for that. I understand  
16 I'm speaking for the company.

17 BY MR. PLACITELLA:

18 Q. Okay. And I wanted to show you  
19 what's been marked as Steinmetz 11, which is  
20 a notice for today.

21 I'm sure you have a copy.

22 You've seen Steinmetz 11 before?

23 A. I have.

24 Q. When's the first time you saw it?

25 A. I saw a previous copy of this

1 about two weeks ago, and then I saw -- I  
2 believe this is the updated one or the newer  
3 one that was sent to us about a week ago.

4 Q. Okay. And you understand that  
5 those are the topics that you're here to  
6 testify about?

7 MR. FARRELL: Objection to form.

8 THE WITNESS: Yes.

9 BY MR. PLACITELLA:

10 Q. Okay. Now, did BASF or does  
11 BASF, as a matter of principle, recognize  
12 the mandates of the 7th Amendment?

13 MR. FARRELL: Objection to form  
14 and foundation, beyond the scope of  
15 the notice.

16 THE WITNESS: You'd have to  
17 refresh me on the 7th Amendment. I  
18 don't --

19 BY MR. PLACITELLA:

20 Q. Does BASF recognize that, quote,  
21 In suits at common law where the value in  
22 controversy shall exceed \$20, the right of  
23 trial by jury should be preserved?

24 MR. FARRELL: Objection to form,  
25 foundation, beyond the scope of the

1 notice, calls for a legal conclusion.

2 THE WITNESS: I don't know. I  
3 didn't prepare for this, and I'm not a  
4 lawyer.

5 BY MR. PLACITELLA:

6 Q. So you don't know as a matter of  
7 principle whether BASF adheres to the  
8 mandate of the US Constitution?

9 MR. FARRELL: Objection to form,  
10 foundation, beyond the scope of the  
11 notice.

12 Which topic does this relate to  
13 in your notice, Mr. Placitella?

14 MR. PLACITELLA: Is that a form  
15 objection?

16 MR. FARRELL: It's a question for  
17 you as to which of the --

18 MR. PLACITELLA: Okay. I'm not  
19 answering any of your questions, so  
20 please don't ask them.

21 So can you read my question back.

22 (The court reporter read back as  
23 follows:

24 "Q So you don't know as a  
25 matter of principle whether BASF

1 adheres to the mandate of the US  
2 Constitution?")

3 MR. FARRELL: Objection to form,  
4 foundation, beyond the scope of the  
5 notice, calls for a legal conclusion.

6 THE WITNESS: I was, I was  
7 prepared to answer the, to the issues  
8 in this document. I don't know the  
9 official BASF position regarding these  
10 things, and I would have to talk to  
11 BASF.

12 BY MR. PLACITELLA:

13 Q. So as you sit here as the  
14 representative to bind BASF, you don't know  
15 whether BASF adheres to the mandates of the  
16 Constitution concerning the preservation of  
17 trial by jury?

18 MR. FARRELL: Objection to --

19 BY MR. PLACITELLA:

20 Q. Is that what you're saying?

21 MR. FARRELL: Objection to form,  
22 foundation, beyond the scope of the  
23 notice, calls for a legal conclusion,  
24 argumentative.

25 THE WITNESS: I'm not a lawyer.

1 BY MR. PLACITELLA:

2 Q. So the answer is you don't know?

3 MR. FARRELL: Same objections.

4 THE WITNESS: The answer is I'm  
5 not a lawyer.

6 BY MR. PLACITELLA:

7 Q. That wasn't my question. You  
8 either know or you don't know.

9 MR. FARRELL: Same objections,  
10 argumentative.

11 THE WITNESS: I don't know.

12 BY MR. PLACITELLA:

13 Q. Okay. Does BASF recognize that  
14 the right to trial by jury shall not be  
15 taken away from a citizen by way of  
16 deception?

17 MR. FARRELL: Objection to form,  
18 foundation, beyond the scope of the  
19 notice.

20 Which topic in your notice does  
21 this question relate to?

22 BY MR. PLACITELLA:

23 Q. Let me ask the question again.

24 Does BASF recognize the right to  
25 trial by jury shall not be taken away from a

1 citizen through deception?

2 MR. FARRELL: Same objections,  
3 beyond the scope of the notice.

4 Can you state which topic in the  
5 notice this question relates to?

6 MR. PLACITELLA: I'm not  
7 answering your questions today, Mr.  
8 Farrell.

9 BY MR. PLACITELLA:

10 Q. Can you answer my question,  
11 please, Mr. Steinmetz.

12 A. I'm, I'm sorry. I just didn't  
13 prepare for this, so I really can't speak to  
14 that.

15 Q. So you don't know today whether  
16 BASF recognizes that a trial by jury should  
17 not be taken away through deception?

18 MR. FARRELL: Objection to form,  
19 foundation, beyond the scope of the  
20 notice, calls for a legal conclusion.

21 THE WITNESS: I'm not a lawyer,  
22 and I don't know all the implications  
23 of the question you just asked, so I  
24 can't answer that.

25 BY MR. PLACITELLA:

1 Q. Okay. Does BASF recognize the  
2 duty of candor when supplying information  
3 during the discovery phase of a lawsuit?

4 MR. FARRELL: Objection to form,  
5 foundation, beyond the scope of the  
6 notice.

7 THE WITNESS: Once again, I  
8 didn't prepare to answer a question  
9 like that. I'm not a lawyer. So I'm  
10 just not prepared to --

11 BY MR. PLACITELLA:

12 Q. Well, you're here to testify  
13 during the discovery phase of a lawsuit;  
14 correct?

15 MR. FARRELL: Objection to form,  
16 foundation. He's here as the person  
17 to testify about topics that you  
18 provided notice of. This isn't one of  
19 those topics.

20 MR. PLACITELLA: Is that a  
21 speaking objection, sir?

22 MR. FARRELL: No. It is a --

23 MR. PLACITELLA: Okay.

24 MR. FARRELL: -- beyond-the-scope  
25 objection.

1 BY MR. PLACITELLA:

2 Q. Let me ask you a question, sir.

3 MR. FARRELL: Which topic in the  
4 notice --

5 BY MR. PLACITELLA:

6 Q. You are here to testify --

7 MR. FARRELL: -- does your  
8 question relate to?

9 BY MR. PLACITELLA:

10 Q. You are here to testify in  
11 connection with discovery in this case;  
12 correct?

13 MR. FARRELL: Objection to form,  
14 foundation. The witness is here to  
15 testify concerning the notice that you  
16 served and the objections stated in  
17 that notice.

18 MR. PLACITELLA: Could you keep  
19 track of all of the time that's used  
20 in the objections while I'm asking my  
21 questions, please.

22 THE VIDEOGRAPHER: Sure.

23 MR. FARRELL: Thank you.

24 BY MR. PLACITELLA:

25 Q. Sir, you're here to respond to

1 questions in the discovery phase of this  
2 lawsuit; correct?

3 MR. FARRELL: Objection to form,  
4 foundation, beyond the scope of the  
5 notice, misstates why Mr. Steinmetz is  
6 here.

7 BY MR. PLACITELLA:

8 Q. You can answer it.

9 A. My understanding is that I'm here  
10 to respond and to testify regarding the  
11 issues that were outlined in the document in  
12 front of me.

13 Q. And you are testifying today  
14 during -- as part of discovery in this case;  
15 correct?

16 MR. FARRELL: Objection to form,  
17 foundation.

18 THE WITNESS: I'm not a lawyer;  
19 and I don't know what the official  
20 phase of this is called, if it is  
21 discovery or not. So I can't respond  
22 to that.

23 BY MR. PLACITELLA:

24 Q. Do you recognize that you have a  
25 duty of candor when supplying information in

1 the context of your deposition?

2 MR. FARRELL: Objection to form  
3 and foundation.

4 THE WITNESS: I realize that I  
5 have to tell the truth.

6 BY MR. PLACITELLA:

7 Q. Okay. And did you know that BASF  
8 had a duty of candor when supplying  
9 information during and defending the Emtal  
10 talc lawsuits?

11 MR. FARRELL: Objection to form,  
12 foundation, beyond the scope of the  
13 notice.

14 THE WITNESS: Again, there are a  
15 lot of legal terms in here. I'm, I'm  
16 not a lawyer, and I'm just not  
17 prepared to answer that type of a  
18 question.

19 BY MR. PLACITELLA:

20 Q. Well, let me ask you a question  
21 this way: Do you have an understanding that  
22 BASF when it was responding to discovery in  
23 the talc litigation had a duty to tell the  
24 truth?

25 MR. FARRELL: Objection to form

1 and foundation.

2 THE WITNESS: Again, I'm not a  
3 lawyer and I -- that could be a loaded  
4 question. I just don't know the  
5 answer because I'm not a lawyer.

6 BY MR. PLACITELLA:

7 Q. Sir, what's loaded about "duty to  
8 tell the truth"? You don't understand those  
9 words?

10 MR. FARRELL: Objection to form  
11 and foundation, argumentative.

12 THE WITNESS: I'm sorry. I'm not  
13 a lawyer. And when a nonlawyer hears  
14 lawyers speak, you know, we worry  
15 about whether we understand everything  
16 that you're saying.

17 BY MR. PLACITELLA:

18 Q. What's your understanding of "the  
19 truth," sir?

20 MR. FARRELL: Objection to form,  
21 argumentative.

22 THE WITNESS: "The truth" is  
23 to -- to me, in lay terms, is to tell  
24 facts as you understand them and to  
25 not deceive.

1 BY MR. PLACITELLA:

2 Q. All right. Do you understand  
3 that when BASF was answering discovery in  
4 the talc cases that they had an obligation  
5 not to deceive, using your terminology?

6 MR. FARRELL: Objection to form,  
7 foundation, beyond the scope of the  
8 notice.

9 THE WITNESS: Again, I, I don't  
10 disagree with you. I just don't know  
11 the legal requirements of that, that a  
12 defendant -- or a plaintiff, for that  
13 matter -- is required to follow. I  
14 just don't know the law that well.

15 BY MR. PLACITELLA:

16 Q. You don't know as you sit here as  
17 speaking on behalf of the corporation  
18 whether or not the corporation had a duty  
19 not to deceive litigants?

20 MR. FARRELL: Objection to form,  
21 foundation, beyond the scope of the  
22 notice.

23 THE WITNESS: I know that BASF  
24 would always tell the truth. I just  
25 don't know what the law says about it.

1 BY MR. PLACITELLA:

2 Q. I'm not talking about the law,  
3 sir. I'm talking about your understanding  
4 of what's right and wrong.

5 Did BASF have the -- the  
6 obligation to tell the truth when responding  
7 to discovery and providing information in  
8 the Emtal lawsuits?

9 MR. FARRELL: Objection to form,  
10 foundation, beyond the scope of the  
11 notice, asked and answered.

12 THE WITNESS: I'm sorry. Could  
13 you repeat that one.

14 MR. PLACITELLA: Could you read  
15 the question back, please.

16 (The court reporter read back as  
17 follows:

18 "Q I'm not talking about  
19 the law, sir. I'm talking about  
20 your understanding of what's right  
21 and wrong.

22 "Did BASF have the -- the  
23 obligation to tell the truth when  
24 responding to discovery and  
25 providing information in the Emtal

1 lawsuits?")

2 THE WITNESS: I understand that  
3 you're not talking about the law. But  
4 I'm, I'm sitting here representing  
5 BASF. And you're asking questions of  
6 me that could have legal implications.

7 And I'm not prepared to answer  
8 them because I don't know the legal  
9 implications of the questions. They  
10 may be -- it may be a very  
11 straightforward question, but I don't  
12 understand that. I don't know what it  
13 means.

14 BY MR. PLACITELLA:

15 Q. Tell me what you don't  
16 understand.

17 A. And I haven't prepared to talk  
18 about these things.

19 Q. You're not here to talk about  
20 what's true and not true?

21 MR. FARRELL: Objection to form,  
22 foundation, beyond the scope of the  
23 notice, misstates the notice.

24 BY MR. PLACITELLA:

25 Q. Sir, you're not here to talk

1 about what's true and not true?

2 MR. FARRELL: Same objections.

3 THE WITNESS: I'm here to talk  
4 truthfully about what the topics are  
5 in this deposition notice.

6 BY MR. PLACITELLA:

7 Q. You know the difference between a  
8 true statement and a false statement, do you  
9 not?

10 MR. FARRELL: Objection to form.

11 THE WITNESS: Again, it depends  
12 what -- how you're defining true and  
13 false. But I, in a lay sense, yes, I  
14 do understand.

15 BY MR. PLACITELLA:

16 Q. And you know the difference  
17 between a true statement and a misleading  
18 statement, do you not?

19 MR. FARRELL: Objection to form,  
20 foundation.

21 THE WITNESS: Again, it would  
22 depend on context and how you're  
23 defining each term. But I have my  
24 understanding, yes.

25 BY MR. PLACITELLA:

1 Q. Okay. What's your understanding  
2 of a misleading statement?

3 MR. FARRELL: Objection to form.

4 THE WITNESS: A misleading  
5 statement is a statement that's  
6 intended to mislead, to misinform.

7 BY MR. PLACITELLA:

8 Q. Okay. Does BASF recognize that  
9 it's wrong to mislead litigants and Courts  
10 concerning facts relevant to a lawsuit that  
11 are in possession of BASF?

12 MR. FARRELL: Objection to form,  
13 foundation, beyond the scope of the  
14 notice.

15 THE WITNESS: I would believe  
16 that BASF understands that. I, again,  
17 I don't know the legal implications of  
18 your question and what it means.

19 BY MR. PLACITELLA:

20 Q. Okay. Does BASF recognize its  
21 obligation to conduct an investigation of  
22 the facts and information available to the  
23 corporation when responding to discovery in  
24 a talc litigation?

25 MR. FARRELL: Objection to form,

1 foundation, beyond the scope of the  
2 notice.

3 THE WITNESS: I'm not a lawyer.  
4 I don't understand the obligations  
5 under the law. So my -- I don't know.

6 BY MR. PLACITELLA:

7 Q. So you don't know as you sit here  
8 as the corporate representative whether you  
9 had an obligation to investigate the facts  
10 that were available to BASF when preparing  
11 for this deposition?

12 MR. FARRELL: Objection to form,  
13 foundation, beyond the scope of the  
14 notice, misstates the witness'  
15 testimony.

16 THE WITNESS: Once again, I'm a  
17 lawyer [sic]. I don't understand what  
18 exactly is incorporated in the term  
19 "obligation." I just don't know.

20 BY MR. PLACITELLA:

21 Q. Well, what did you understand  
22 your obligation was to prepare yourself to  
23 testify today?

24 MR. FARRELL: Objection to form,  
25 foundation, misstates the witness'

1 testimony.

2 You're now asking a different  
3 question.

4 THE WITNESS: My obligation as I  
5 understand it was to research and  
6 learn enough about the material  
7 included in these deposition topics  
8 that I would be able to answer  
9 truthfully here today.

10 BY MR. PLACITELLA:

11 Q. And does that include the  
12 information that's available to BASF  
13 concerning these topics?

14 MR. FARRELL: Objection to form  
15 and foundation.

16 THE WITNESS: As I understand it,  
17 yes.

18 BY MR. PLACITELLA:

19 Q. So you do agree with me that you  
20 recognize the obligation to investigate the  
21 facts and information available to BASF when  
22 preparing for today's deposition?

23 MR. FARRELL: Objection to form,  
24 foundation, beyond the scope of the  
25 notice.

1 THE WITNESS: Again, I'm not a  
2 lawyer. I hear a sentence, and it  
3 could mean a lot of things. I  
4 understand that it was my role to  
5 prepare for this deposition and these  
6 deposition topics using the  
7 information available to me through  
8 counsel and through BASF.

9 BY MR. PLACITELLA:

10 Q. Does -- do you understand that --  
11 or do you recognize that facts known to BASF  
12 are required to respond in this case or to  
13 be provided by BASF and not its lawyers?

14 Do you know that?

15 MR. FARRELL: Objection to form,  
16 foundation, beyond the scope of the  
17 notice, calls for a legal conclusion.

18 BY MR. PLACITELLA:

19 Q. Sir, let me phrase it a different  
20 way.

21 You understand this is not a  
22 deposition of BASF's lawyers; correct?

23 MR. FARRELL: Same objections.

24 THE WITNESS: I'm truly not  
25 trying to be difficult here. I

1 understand.

2 BY MR. PLACITELLA:

3 Q. It sounds that way, but that's  
4 okay.

5 A. I'll truly not --

6 MR. FARRELL: Objection.

7 BY MR. PLACITELLA:

8 Q. Somebody else will decide that at  
9 another point in time. Let me ask you a  
10 question.

11 MR. FARRELL: Excuse me.

12 MR. PLACITELLA: I withdraw the  
13 last question.

14 MR. FARRELL: It was  
15 argumentative.

16 MR. PLACITELLA: I withdraw the  
17 last question.

18 MR. FARRELL: It wasn't a  
19 question. It was argument.

20 MR. PLACITELLA: Mr. Steinmetz --

21 MR. FARRELL: Great.

22 Court reporter, could you also  
23 track the number of times that  
24 Mr. Placitella asks questions that are  
25 beyond the scope of the notice and

1 argumentative. Thank you.

2 BY MR. PLACITELLA:

3 Q. You understand that you're here  
4 to provide information about what is known  
5 to BASF, not its lawyers; correct?

6 MR. FARRELL: Objection to form,  
7 foundation, beyond the scope of the  
8 notice, calls for a legal conclusion.

9 THE WITNESS: Again, I'm not a  
10 lawyer. I understand that I'm here to  
11 testify regarding information that  
12 BASF knows. But much of what BASF  
13 knows also comes through preparation  
14 with the counsel that I've worked  
15 with.

16 BY MR. PLACITELLA:

17 Q. So what you're going to testify  
18 to comes from the lawyers and not from BASF  
19 itself?

20 MR. FARRELL: Objection to --

21 BY MR. PLACITELLA:

22 Q. Is that what you're saying?

23 MR. FARRELL: Objection to form,  
24 foundation, misstates his testimony.

25 THE WITNESS: No.

1 BY MR. PLACITELLA:

2 Q. Okay. So as you sit here today,  
3 you understand that the information that  
4 you're to be provided comes exclusively from  
5 BASF and not its lawyers; right?

6 MR. FARRELL: Objection to form,  
7 foundation.

8 THE WITNESS: I understand that  
9 the information comes from BASF. I  
10 was prepared by lawyers.

11 BY MR. PLACITELLA:

12 Q. Okay. That's fair.

13 You understand that lawyers  
14 representing BASF rely upon facts that are  
15 provided by the client -- that is, BASF;  
16 correct?

17 MR. FARRELL: Objection to form,  
18 foundation, beyond the scope of the  
19 notice.

20 THE WITNESS: I'm sorry. Could  
21 you repeat that.

22 BY MR. PLACITELLA:

23 Q. The lawyers, when they're  
24 responding to discovery or making  
25 statements, you understand that that

1 information comes from the client; correct?

2 MR. FARRELL: Objection to form,  
3 foundation.

4 THE WITNESS: I understand that a  
5 lot of the information -- that the  
6 original information comes from the  
7 client. But obviously, when a client  
8 hires a law firm to litigate for it,  
9 it depends on that, on that law firm  
10 to do a lot of the day-to-day  
11 activities -- prepare documents, send  
12 documents out -- and not necessarily  
13 everything is coming directly from  
14 BASF, for example.

15 BY MR. PLACITELLA:

16 Q. Okay. I'm not talking about the  
17 physical paper that's sent out in a case.  
18 I'm saying the factual basis for a defense  
19 comes from the client, not the lawyers;  
20 correct?

21 MR. FARRELL: Objection to form,  
22 foundation, beyond the scope of the  
23 notice.

24 THE WITNESS: Again, I agree that  
25 the factual basis are the facts. The

1 original information would come from  
2 the company. But the -- a lot of the  
3 analysis and analytical work would  
4 come from the law firm that you've  
5 hired.

6 BY MR. PLACITELLA:

7 Q. Okay. You understand that it's  
8 your company's obligation to ensure that the  
9 representations that are made by the lawyers  
10 on behalf of the company are accurate,  
11 truthful, and not misleading; correct?

12 MR. FARRELL: Objection to form,  
13 foundation.

14 THE WITNESS: Again, I don't  
15 understand the legalities of  
16 client/attorney relationships. I know  
17 that companies hire and retain counsel  
18 to represent them appropriately. And  
19 the company has to be comfortable that  
20 it's been done in the way that you  
21 mentioned.

22 BY MR. PLACITELLA:

23 Q. So you agree with me that it,  
24 it's the company's responsibility ultimately  
25 to make sure that the information that's

1 used in a lawsuit by its lawyers is  
2 accurate, truthful, and not misleading;  
3 correct?

4 MR. FARRELL: Objection to form,  
5 foundation.

6 THE WITNESS: It may be the  
7 responsibility. I'm not a lawyer, and  
8 I just don't know the legalities of  
9 it.

10 BY MR. PLACITELLA:

11 Q. Okay. Does BASF recognize that  
12 the lawyers that are representing it in the  
13 talc litigation are, in fact, your agents,  
14 BASF agents?

15 MR. FARRELL: Objection to form,  
16 foundation, beyond the scope of the  
17 notice.

18 THE WITNESS: I'm sorry. Again,  
19 I'm not trying to be difficult. I  
20 don't know the legal definition of  
21 "agent," so I don't know.

22 BY MR. PLACITELLA:

23 Q. They're working for you; correct?

24 MR. FARRELL: Same objections.

25 THE WITNESS: They are working

1           for BASF. I don't know if they're  
2           agents. I don't know what the, what  
3           the legal ramifications of that are.

4       BY MR. PLACITELLA:

5           Q.    So, for example, Mr. Farrell in  
6           essence works for you because you are the  
7           company; correct?

8                   MR. FARRELL:  Objection to form  
9           and foundation.

10                   THE WITNESS:  That may be true.  
11           I don't know. I, I don't know.

12       BY MR. PLACITELLA:

13           Q.    Well, he's -- you're working for  
14           him?

15                   MR. FARRELL:  Objection to  
16           form --

17       BY MR. PLACITELLA:

18           Q.    I'm trying to understand that.

19                   MR. FARRELL:  Objection to form,  
20           foundation, beyond the scope of the  
21           notice, argumentative.

22                   THE WITNESS:  No, I don't think  
23           he works for me -- I don't, I don't  
24           think I work for him. I just don't  
25           know the legal definition of, of the

1 relationship. So I just -- I'm not  
2 qualified to talk about this.

3 BY MR. PLACITELLA:

4 Q. So as the representative for BASF  
5 to answer questions on its behalf, you do  
6 not know whether the lawyers are working for  
7 the company?

8 MR. FARRELL: Objection to form,  
9 foundation, beyond the scope of the  
10 notice. Kirkland and Ellis'  
11 relationship with BASF is not a  
12 subject for testimony today,  
13 Mr. Placitella.

14 Do you have any questions, now  
15 that we're 30 minutes in and you  
16 haven't yet asked a question within  
17 the scope of your notice? Do you have  
18 a question that's actually covered by  
19 your notice?

20 MR. PLACITELLA: Can you read my  
21 question back, please.

22 (The court reporter read back as  
23 follows:

24 "Q So as the  
25 representative for BASF to answer

1           questions on its behalf, you do not  
2           know whether the lawyers are working  
3           for the company?" )

4                   MR. FARRELL:   Same objections.

5   BY MR. PLACITELLA:

6           Q.    You can answer it.

7           A.    So I'll say it again.  I'm not a  
8           lawyer.  I didn't prepare for answering  
9           questions like this.  In the, in the, in a  
10          very -- in a layperson's sense, yes, the,  
11          the, the law firm that the client hires does  
12          work for them.  I don't know the legal, the  
13          legal definitions or the legal ramifications  
14          of what that relationship is.

15          Q.    And you depend on your lawyers,  
16          historically, to provide accurate, truthful,  
17          and not misleading information when giving  
18          information in a lawsuit; correct?

19                   MR. FARRELL:  Objection to form,  
20          foundation.

21                  THE WITNESS:  Again, from a  
22          nonlawyer perspective, I, I'm not  
23          qualified to make legal arguments here  
24          or legal statements.  But I think that  
25          would be a reasonable thing to

1 expect --

2 BY MR. PLACITELLA:

3 Q. Okay.

4 A. -- of anything that works for  
5 you.

6 Q. Okay. Can you tell me what  
7 documents specifically you reviewed in  
8 preparation for today's deposition?

9 A. I reviewed a large number. I  
10 reviewed a lot of the depositions from, from  
11 this case, depositions from both Engelhard  
12 employees or past employees as well as  
13 Cahill employees or past employees.

14 I looked at documents involving  
15 some of the plaintiffs in this case and  
16 their past cases.

17 I reviewed -- or should say that  
18 I was given a demonstration of the Cahill  
19 databases, the Access databases that were  
20 used to track some of the cases that they  
21 were handling for Engelhard.

22 Q. When did you get the  
23 demonstration of the Cahill databases?

24 MR. FARRELL: Objection to form.

25 Go ahead, sir.

1 THE WITNESS: I'm trying to  
2 remember if that was yesterday or late  
3 last week. It was, it was within the  
4 last week. I'm -- I've been doing a  
5 lot, so I just can't remember exactly  
6 when I saw it. I believe it was last  
7 week that I saw it.

8 BY MR. PLACITELLA:

9 Q. Okay. And who gave that  
10 demonstration?

11 A. That was given by Elizabeth  
12 Dalmut.

13 Q. And why did you ask for -- have  
14 that demonstration done?

15 A. Because I knew it was included  
16 in -- the information surrounding that was  
17 included in one of the topics of the  
18 deposition notice, and I wanted to see how  
19 it worked and what it, what it looked like.

20 Q. And what were you able to see?  
21 What were you able to find out?

22 MR. FARRELL: Objection to form.

23 THE WITNESS: Again, I didn't do  
24 it myself. But Elizabeth went through  
25 it and generated some reports from the

1 information and tables that are  
2 included in that.

3 BY MR. PLACITELLA:

4 Q. And what kind of reports?

5 A. Summary reports regarding  
6 litigation that was handled by Cahill for  
7 Engelhard. And it listed -- that included  
8 columns showing different pieces of  
9 information related to the, to each of those  
10 lawsuits.

11 Q. And you looked at that in  
12 preparation for today?

13 A. Yes. I looked at them to get an  
14 idea of what the database looked like. I  
15 didn't use it specifically to pull out  
16 specific information but just to get a  
17 general idea of what the database looks like  
18 and how it works.

19 Q. Well, did you look at hard copy  
20 of reports?

21 A. No.

22 Q. So you looked at it on the screen  
23 only?

24 A. Yes.

25 Q. Okay. And if you were asked

1 today, you could actually show me what you  
2 looked at if you had the database in front  
3 of you?

4 MR. FARRELL: Objection to form.

5 THE WITNESS: I last used Access  
6 about 15 years ago. I wasn't very  
7 good at it then. I probably -- if  
8 Elizabeth did it, I could look at it,  
9 but I couldn't do it myself.

10 BY MR. PLACITELLA:

11 Q. So what information did you see?  
12 What kind of reports? What was the  
13 information that was extracted?

14 MR. FARRELL: Objection to form.

15 THE WITNESS: It was information  
16 that included, for example, in  
17 the first column the name of a case.  
18 And, and then several columns to the  
19 right of that that included  
20 information regarding the reason for  
21 resolution, the claim, what the  
22 material was that was being claimed  
23 as, as, as being harmful, information  
24 on personnel, names of people -- those  
25 kinds of things. I don't remember

1 much more.

2 BY MR. PLACITELLA:

3 Q. Did you ever see anything that  
4 had the name of the plaintiff and the injury  
5 that was alleged?

6 A. I, I -- you know, I believe it  
7 was there but I can't remember it  
8 specifically.

9 Q. Okay.

10 A. I should also note that a lot of  
11 the cells in the report are blank because it  
12 wasn't uniformly filled out and not  
13 everything was in there.

14 Q. Did you look at any of the --  
15 well, scratch that.

16 So you also saw reports that had  
17 the plaintiff's name and the reason for the,  
18 whatever happened to the case?

19 MR. FARRELL: Objection to form  
20 and foundation.

21 THE WITNESS: I believe that may  
22 have been there. Again, it was -- I  
23 think it was last week. I wasn't  
24 looking at it for specific details  
25 like that. I was just trying to get a

1 big-picture view of it. And as I  
2 mentioned, much of the database was  
3 incomplete.

4 BY MR. PLACITELLA:

5 Q. Okay. So you said you looked at  
6 depositions taken in this case. Did you  
7 look at all of them?

8 A. I don't think I've looked at  
9 everything. I've looked at -- to my  
10 understanding, I've looked at the  
11 depositions from BASF and Cahill personnel.

12 Q. Okay. And did you look at any  
13 other documents besides depositions and the  
14 database?

15 A. I looked at a few examples of  
16 interrogatories that I believe you've used  
17 as exhibits. I may have looked at some  
18 depositions from other cases that were  
19 involved in this litigation.

20 Q. Which depositions?

21 A. Partial depositions from some of  
22 the plaintiffs -- for example, Kimberlee  
23 Williams and Gale Williams, maybe Jennifer  
24 Graham, Danette Wenger and some of those  
25 people; but not the entire depositions.

1 Q. Okay. Did you speak with anybody  
2 other than counsel in preparation for  
3 today's deposition?

4 A. No.

5 Q. Did you ask to speak to  
6 Mr. Halket?

7 A. No.

8 Q. Why not?

9 A. I didn't think I needed to.

10 Q. Didn't you list him as people  
11 with knowledge in certifying answers to  
12 interrogatories in this case?

13 MR. FARRELL: Objection to form  
14 and foundation.

15 THE WITNESS: I didn't see a need  
16 to talk to him.

17 BY MR. PLACITELLA:

18 Q. Do you know what he knows?

19 A. I can't put myself in his mind,  
20 so I don't know what he knows.

21 Q. Why did you list him as somebody  
22 with pertinent knowledge and not speak with  
23 him?

24 MR. FARRELL: Objection to form,  
25 foundation, beyond the scope of the

1 notice.

2 THE WITNESS: I didn't think it  
3 was necessary.

4 BY MR. PLACITELLA:

5 Q. Why?

6 A. I just didn't.

7 MR. FARRELL: Same objections.

8 BY MR. PLACITELLA:

9 Q. Why?

10 A. No specific reason. I just felt  
11 that I could get the information I needed  
12 from the documents that counsel could supply  
13 me.

14 Q. Well, you knew, you knew he  
15 worked for Engelhard and he was alive and  
16 accessible. Did you ask to speak with him?

17 MR. FARRELL: Objection to form,  
18 foundation.

19 THE WITNESS: No.

20 BY MR. PLACITELLA:

21 Q. Did you speak with Mr. Dornbusch?

22 A. No.

23 Q. Did you speak with Lester  
24 Fliegel?

25 A. No.

1 Q. You listed him as somebody with  
2 knowledge in answer to interrogatories. Why  
3 didn't you speak with him?

4 MR. FARRELL: Objection to form  
5 and foundation.

6 THE WITNESS: I guess I felt --  
7 again, I was getting the information I  
8 needed from counsel. I knew you  
9 didn't depose him. So I didn't feel  
10 it was necessary.

11 BY MR. PLACITELLA:

12 Q. So if I didn't depose him, then  
13 he didn't know anything? Is that what you  
14 concluded?

15 MR. FARRELL: Objection to form,  
16 foundation, argumentative.

17 THE WITNESS: No. I just felt  
18 that I could get the information I  
19 needed from counsel and prepare for  
20 this --

21 BY MR. PLACITELLA:

22 Q. And counsel told you all about  
23 what Mr. Fliegel knows or doesn't know?

24 MR. FARRELL: Objection to form,  
25 foundation.

1 THE WITNESS: No. Counsel, I  
2 think, prepared me pretty well,  
3 considering the time constraints, for  
4 the questions that are in the  
5 deposition.

6 BY MR. PLACITELLA:

7 Q. Well, you've listed these  
8 people -- Mr. Halket, Mr. Fliegel -- as  
9 people with knowledge in this case for more  
10 than a year. But you never spoke to them to  
11 find out what they know as part of your  
12 obligation to be prepared to answer  
13 questions today?

14 MR. FARRELL: Objection to form,  
15 foundation, beyond the scope of the  
16 notice.

17 THE WITNESS: Again, I felt  
18 counsel could prepare me. I knew that  
19 you didn't depose them. So you could  
20 have also talked to them, and you  
21 decided it wasn't worth it. And the  
22 information I would have gotten from  
23 them would have been secondhand for  
24 you anyway.

25 So I guess I felt comfortable

1           that I could prepare for these  
2           questions with counsel.

3       BY MR. PLACITELLA:

4           Q.    So you don't think you have an  
5           obligation as a corporate witness in  
6           informing yourself to speak to former  
7           employees that you have access to, to see  
8           what they know?

9                   MR. FARRELL:  Objection to form,  
10           foundation.

11                   THE WITNESS:  I'm very  
12           comfortable that counsel can prepare  
13           me for these depositions.

14       BY MR. PLACITELLA:

15           Q.    Okay.  You listed Mr. Fliegel as  
16           somebody with knowledge.  What did he know?

17                   MR. FARRELL:  Objection to form,  
18           foundation, beyond the scope of the  
19           notice, also calls for privileged  
20           information.

21                   Mr. Steinmetz, you don't need to  
22           answer that question.

23       BY MR. PLACITELLA:

24           Q.    What factual information did  
25           Mr. Fliegel have that, that required you to

1 list him as somebody with knowledge in your  
2 answers to interrogatories in this case?

3 MR. FARRELL: Same objections,  
4 calls for privileged information.

5 Mr. Steinmetz, you don't need to  
6 answer the question.

7 BY MR. PLACITELLA:

8 Q. Who's Mr. Peters?

9 A. Mr. Peters, I believe, was a, I  
10 believe he was an attorney with Engelhard.

11 Q. Okay. And what, what -- do you  
12 know what he knows about this case?

13 MR. FARRELL: Objection to form,  
14 foundation, beyond the scope of the  
15 notice.

16 THE WITNESS: I didn't speak to  
17 him.

18 BY MR. PLACITELLA:

19 Q. So you have no idea what he knows  
20 or does not know?

21 A. I don't know.

22 Q. But you certified interrogatories  
23 listing him as somebody with knowledge?

24 MR. FARRELL: Objection --

25 BY MR. PLACITELLA:

1 Q. Correct?

2 MR. FARRELL: Objection to form,  
3 foundation, and beyond the scope of  
4 the notice.

5 Do you have a document you want  
6 to show him that you're referring to?

7 MR. PLACITELLA: Is that a form  
8 objection? If not, I'd ask you to  
9 keep your comments to yourself  
10 today --

11 MR. FARRELL: They're not  
12 comments.

13 MR. PLACITELLA: -- okay?  
14 Sir --

15 MR. FARRELL: Excuse me. Excuse  
16 me. You made a statement. I would  
17 like to respond to it. I asserted --

18 MR. PLACITELLA: You're not the  
19 one answering the question.

20 MR. FARRELL: I asserted a proper  
21 objection. You're referring to a  
22 document that you claim that the  
23 witness verified, and you're making a  
24 statement that it said something.

25 I've asked whether you can hand

1           the witness a copy of the document  
2           that you've made reference to, as  
3           would be appropriate in a deposition  
4           such as this.

5       BY MR. PLACITELLA:

6           Q.    Okay. I want to show you what's  
7       been marked Exhibit 63.

8                   MR. FARRELL: Can I have a copy,  
9       please.

10                  MR. BOISE: Chris, if you don't  
11       have another copy, can you just  
12       identify it.

13                  MR. PLACITELLA: Yeah, I will.

14                  (A document previously marked as  
15       Exhibit 63 was introduced.)

16       BY MR. PLACITELLA:

17           Q.    Exhibit 63 -- which I'll put up  
18       on the screen so everyone can see it -- are  
19       answers of BASF Catalysts to interrogatories  
20       propounded by plaintiffs in this case. Do  
21       you see that?

22           A.    Yes.

23           Q.    Okay. And you certified these  
24       answers; correct?

25           A.    Yes.

1 Q. Okay. And if you go to  
2 interrogatory number 3, you list certain  
3 people; correct?

4 A. Yes.

5 Q. You list Arthur Dornbusch,  
6 correct --

7 A. Yes.

8 Q. -- as somebody with knowledge;  
9 correct?

10 MR. FARRELL: One moment.

11 Objection to form, foundation,  
12 misstates the interrogatory and the  
13 interrogatory response.

14 BY MR. PLACITELLA:

15 Q. You list Arthur Dornbusch;  
16 correct?

17 A. I'm sorry. Could you repeat the  
18 question again.

19 Q. You -- in this answer you list  
20 Arthur Dornbusch; correct?

21 A. He is listed in the response to  
22 interrogatory 3, yes.

23 Q. But you did not speak to him?

24 MR. FARRELL: Objection to  
25 form --

1 BY MR. PLACITELLA:

2 Q. And you did not ask to speak to  
3 him; correct?

4 MR. FARRELL: Objection to form,  
5 foundation, misstates Mr. Steinmetz's  
6 testimony.

7 THE WITNESS: I did not speak to  
8 him. But he has provided a great deal  
9 of testimony in this case.

10 BY MR. PLACITELLA:

11 Q. Okay. You did not speak with him  
12 nor ask to speak with him; correct?

13 MR. FARRELL: Objection to form,  
14 foundation, asked and answered.

15 THE WITNESS: I did not.

16 BY MR. PLACITELLA:

17 Q. Okay. You list Mr. Halket. You  
18 did not speak with him nor ask to speak with  
19 him; correct?

20 MR. FARRELL: Objection to form,  
21 foundation, asked and answered.

22 THE WITNESS: That's correct.

23 BY MR. PLACITELLA:

24 Q. Okay. You list Mr. Peters. You  
25 did not speak with him nor ask to speak with

1 him; correct?

2 MR. FARRELL: Objection to form,  
3 foundation, asked and answered.

4 THE WITNESS: That's correct.

5 BY MR. PLACITELLA:

6 Q. You list Michael Hassett. You  
7 did not speak with him or ask to speak with  
8 him; correct?

9 MR. FARRELL: Objection to form  
10 and foundation.

11 THE WITNESS: That's correct.

12 BY MR. PLACITELLA:

13 Q. You list Jonathan Greenberg. You  
14 did not speak with him or ask to speak with  
15 him; correct?

16 MR. FARRELL: Same objections.

17 THE WITNESS: Not regarding this  
18 case; that's correct.

19 BY MR. PLACITELLA:

20 Q. You are aware that Dr. Glenn  
21 Hemstock is alive. Do you know who he is?

22 A. I do.

23 Q. And you're aware he's alive?

24 A. Yes.

25 Q. Did you ask to speak with him?

1 MR. FARRELL: Object to the form.

2 THE WITNESS: No.

3 BY MR. PLACITELLA:

4 Q. You understand that he was head  
5 of research and development?

6 A. I understand that. And he's  
7 provided a lot of deposition testimony over  
8 the last few years; yes.

9 Q. And one of the topics that you  
10 are here to talk about today was the  
11 transfer of information related to research  
12 and development; correct?

13 MR. FARRELL: Objection to form,  
14 foundation, misstates the notice.

15 THE WITNESS: I'd have to look at  
16 the notice if that's a specific part  
17 of the question. I -- so I'd have to  
18 look at detail on the -- in the  
19 notice.

20 BY MR. PLACITELLA:

21 Q. And how long have you been  
22 serving as a corporate representative for  
23 BASF?

24 A. This is the third year I've been  
25 doing it, I believe.

1 Q. In any of the three years did you  
2 ever speak with Dr. Hemstock?

3 A. No.

4 Q. Did you ever ask to speak with  
5 Dr. Hemstock?

6 A. No.

7 Q. Have you ever been prevented from  
8 speaking to Dr. Hemstock?

9 A. No.

10 Q. Do you know who Peter Gale is?

11 A. Yes.

12 Q. And who is he?

13 A. He was a scientist that worked  
14 for -- or who worked for BASF -- or for  
15 Engelhard; I'm sorry.

16 Q. And you know he's alive?

17 A. Yes.

18 Q. And have you ever asked to speak  
19 with him?

20 A. No.

21 Q. Have you ever spoken with him?

22 A. No.

23 Q. Okay. Do you know who Charles  
24 Carter is?

25 A. I know who Charles Carter is,

1 yes.

2 Q. You actually answered  
3 interrogatories referencing Charles Carter;  
4 correct?

5 A. Yes.

6 Q. Did you speak to Charles Carter  
7 in preparation for your deposition?

8 A. No; but he has provided testimony  
9 in this case.

10 Q. Did you ask to speak to Charles  
11 Carter?

12 A. No.

13 Q. Okay. Was there anything that  
14 was not in his deposition that you would  
15 want to know from Charles Carter?

16 MR. FARRELL: Objection to form,  
17 foundation, calls for speculation.

18 THE WITNESS: Not that I know of.  
19 I think that everything I could  
20 possibly tell about Charles Carter,  
21 he's already talked about in his own  
22 words.

23 BY MR. PLACITELLA:

24 Q. Okay. You under -- you also list  
25 in interrogatory answers Craig Stoneback.

1 Do you know who he is?

2 A. Yes.

3 Q. And who is he?

4 A. I believe he was also a person  
5 who acted as a, as the person verifying  
6 documents.

7 Q. Okay. And he's alive, isn't he?

8 A. I don't know.

9 Q. Okay. Did you ask to speak with  
10 him?

11 A. No.

12 Q. So in preparation for this  
13 deposition, just to be clear, you didn't ask  
14 to speak to a single person who would have  
15 personal knowledge of what went on in the  
16 Emtal talc litigation before you were paid  
17 as a consultant to testify on behalf of  
18 BASF; correct?

19 MR. FARRELL: Objection to form,  
20 foundation, misstates Mr. Steinmetz's  
21 testimony.

22 THE WITNESS: Again, I didn't  
23 speak to the people that, that you've  
24 mentioned; but a large number of them  
25 have already provided a lot of

1 information in their own words through  
2 depositions.

3 Q. Did you speak to any person with  
4 personal knowledge concerning the facts and  
5 circumstances of the Emtal talc litigation  
6 that you're here to testify about?

7 MR. FARRELL: Same objections,  
8 asked and answered.

9 THE WITNESS: I did not speak to  
10 any of the people from Engelhard or  
11 Cahill.

12 BY MR. PLACITELLA:

13 Q. Anybody, I'm asking.

14 A. No.

15 Q. Did you ask to speak to any of  
16 them and have permission refused?

17 MR. FARRELL: Same objections,  
18 asked and answered.

19 THE WITNESS: No.

20 BY MR. PLACITELLA:

21 Q. How many times have you testified  
22 as a corporate witness for BASF in the talc  
23 litigation?

24 A. I believe it's five or six times  
25 now. I, I'd have to think about it, but I

1 think it's about that.

2 Q. Okay. And other than the  
3 deposition questions I asked you -- which  
4 I'm sure you don't want to remember -- what  
5 other subject matters did you cover as a  
6 corporate witness?

7 A. I think, I think that's generally  
8 it. I've -- most of the testimony I've  
9 given has been regarding documents and where  
10 they came from, how they were stored, those  
11 types of things.

12 Q. Do you recall testifying in the  
13 Fields case?

14 A. Yes.

15 Q. Do you recall that you were asked  
16 questions about the testing documents that  
17 you reviewed?

18 A. Yes.

19 Q. Okay. Do you recall that you  
20 were asked questions about what was in the  
21 Ashton affidavit?

22 A. I have been asked questions about  
23 the Ashton affidavit, yes.

24 Q. And, in fact, you reviewed the  
25 Ashton affidavit in preparation for your

1 various testimonies?

2 A. I have. I didn't read it in a  
3 lot of detail this time, but I have read it  
4 before; yes.

5 Q. Okay. Now, you have previously  
6 certified discovery responses concerning  
7 what information was in the Cahill database;  
8 correct?

9 MR. FARRELL: Objection to form.

10 THE WITNESS: I'm not sure I  
11 have -- I'm sorry. What was the  
12 question again?

13 BY MR. PLACITELLA:

14 Q. You have previously certified  
15 discovery responses on behalf of BASF  
16 concerning what information was in the  
17 Cahill database; correct?

18 MR. FARRELL: Objection to form.

19 THE WITNESS: Yes. I haven't, I  
20 haven't testified regarding it before.

21 BY MR. PLACITELLA:

22 Q. I'm just asking what you  
23 certified.

24 You have certified discovery  
25 responses concerning information that was in

1 possession of other lawyers concerning the  
2 talc litigation; correct?

3 MR. FARRELL: Objection to form,  
4 foundation.

5 THE WITNESS: And by "other  
6 lawyers," I'm not sure who you're  
7 referring to.

8 BY MR. PLACITELLA:

9 Q. Well, they're your words, "other  
10 lawyers."

11 A. I --

12 MR. FARRELL: Objection to form  
13 and foundation.

14 THE WITNESS: I believe I'd have  
15 to look at -- I'd have to look at the  
16 discovery again to, to confirm that.

17 BY MR. PLACITELLA:

18 Q. You have certified interrogatory  
19 answers that discuss injury prevalence rates  
20 for the various people who sued Engelhard  
21 and BASF; correct?

22 MR. FARRELL: Objection to form,  
23 foundation.

24 THE WITNESS: Again, I'd have to  
25 see the specific document that you're

1           talking about. I don't remember  
2           talking about injury prevalence rates.  
3           They might be there; I just don't  
4           remember it in those terms.

5       BY MR. PLACITELLA:

6           Q.    You have certified interrogatory  
7           answers concerning the reasons why people  
8           chose to settle or dismiss their cases  
9           against Engelhard; correct?

10               MR. FARRELL:  Objection to form  
11               and foundation.

12               THE WITNESS:  I think in the  
13               context of how difficult it is to look  
14               at all of these cases in one bucket  
15               because they're all so different from  
16               each other; but yes.

17       BY MR. PLACITELLA:

18           Q.    Okay. You have certified  
19           interrogatory answers concerning the amounts  
20           people pay -- were paid in settlements in  
21           the Emtal talc litigation; correct?

22               MR. FARRELL:  Objection to form  
23               and foundation.

24               THE WITNESS:  There may have been  
25               references in some of our responses to

1           that. But I don't have a lot of  
2           information and there's not a lot of  
3           information available right now  
4           regarding that kind of information --  
5           regarding that kind of data.

6       BY MR. PLACITELLA:

7           Q.    So the answer to my question is  
8       yes?

9                   MR. FARRELL:  Objection to form,  
10          foundation, asked and answered,  
11          argumentative.

12                  THE WITNESS:  If you could repeat  
13          the question again --

14       BY MR. PLACITELLA:

15           Q.    Yes.

16           A.    -- I'll answer it.

17           Q.    You have certified discovery  
18       responses considering the amount of money  
19       people were paid in settlements in the talc  
20       litigation?

21                  MR. FARRELL:  Objection to form,  
22          foundation, asked and answered.

23                  THE WITNESS:  We have referred to  
24          that -- or I have referred to that  
25          topic. But I don't know that I can

1           give you a lot of specific information  
2           on it.

3       BY MR. PLACITELLA:

4           Q.     So the answer is yes?

5                     MR. FARRELL:   Same objections,  
6           argumentative, asked and answered.

7                     THE WITNESS:   Again, I'd have to  
8           see the specific wording that we used.  
9           I don't disagree with you.   I just  
10          don't know.

11       BY MR. PLACITELLA:

12           Q.     Okay.   You have certified  
13          interrogatory or discovery responses  
14          concerning how members of the class in this  
15          case were exposed or not exposed to Emtal  
16          talc; correct?

17                     MR. FARRELL:   Objection to form,  
18          foundation.

19                     THE WITNESS:   Again, I'm not sure  
20          whether it's a class or not at this  
21          point.   I don't know --

22       BY MR. PLACITELLA:

23           Q.     Fair enough.

24           A.     -- what the definition is.

25                     But we have talked about those

1 types of issues in, in responses.

2 Q. Okay. You have certified  
3 discovery responses concerning the defense  
4 that was asserted by Engelhard and BASF  
5 using the Ashton affidavit; correct?

6 MR. FARRELL: Objection to form,  
7 foundation.

8 THE WITNESS: We've responded to  
9 questions about the defense used by  
10 Cahill, not just in terms of the  
11 Ashton affidavit but of other  
12 strategies that were used.

13 BY MR. PLACITELLA:

14 Q. So the answer to my question is  
15 yes?

16 MR. FARRELL: Objection to form,  
17 foundation, argumentative.

18 THE WITNESS: Yes. Among other  
19 things; yes.

20 BY MR. PLACITELLA:

21 Q. Okay. You have certified  
22 discovery responses concerning who the  
23 Ashton affidavit was served on and why;  
24 correct?

25 MR. FARRELL: Objection to form,

1 foundation, misstates the record.

2 THE WITNESS: I'm not sure what  
3 the term "served on" means in a legal  
4 sense.

5 BY MR. PLACITELLA:

6 Q. Who was sent copies of the Ashton  
7 affidavit and why they were sent it.

8 MR. FARRELL: Objection to form,  
9 foundation, misstates the record.

10 THE WITNESS: Could you repeat  
11 the question.

12 BY MR. PLACITELLA:

13 Q. You certified interrogatory  
14 responses on the subject of who was sent the  
15 Ashton affidavit and why; correct?

16 MR. FARRELL: Objection to form,  
17 foundation, misstates the record.

18 THE WITNESS: I'd have to look at  
19 the question that we answered again to  
20 see if that's completely accurate. I,  
21 I know we have answered questions  
22 regarding that subject. I just don't  
23 know if, if it would be characterized  
24 the same way as you did.

25 BY MR. PLACITELLA:

1 Q. Okay. You have responded to  
2 interrogatory answers concerning the Carter  
3 affidavit, what was said in the affidavits,  
4 and who they were sent to; correct?

5 MR. FARRELL: Objection to form,  
6 foundation.

7 Which topics in your notice do  
8 these questions relate to,  
9 Mr. Placitella?

10 BY MR. PLACITELLA:

11 Q. Can you answer my question,  
12 please.

13 MR. FARRELL: Can you tell me  
14 which topic in your notes these  
15 questions related to?

16 BY MR. PLACITELLA:

17 Q. Can you answer my question,  
18 please.

19 MR. PLACITELLA: I'm not  
20 answering your questions here. So you  
21 can keep doing it. I'm not answering  
22 your questions today.

23 Can you read my question back.

24 BY MR. PLACITELLA:

25 Q. And can you please answer it.

1                   MR. FARRELL: Then please let the  
2                   record reflect that the last ten  
3                   minutes of questions have been beyond  
4                   the scope of the notice, have nothing  
5                   to do with the notice. The witness is  
6                   doing his best to answer these  
7                   questions, being asked about documents  
8                   that haven't been shown to the  
9                   witness, that he hasn't prepared to  
10                  answer; and that I'm allowing the  
11                  witness to answer the questions,  
12                  notwithstanding the fact that they're  
13                  beyond the scope of the notice and  
14                  Mr. Placitella is not showing the  
15                  witness copies of documents that he's  
16                  referring to.

17                  Go ahead, Mr. Steinmetz.

18                  THE WITNESS: If I could see the  
19                  document, I could answer that a lot  
20                  better.

21 BY MR. PLACITELLA:

22                  Q. Sir, all I'm asking you: Do you  
23                  recall answering interrogatories concerning  
24                  what was in the Carter affidavit and who it  
25                  was sent to?

1 MR. FARRELL: Same objections.

2 THE WITNESS: I recall affidavit  
3 questions regarding Carter. I'd have  
4 to look at the document to see if your  
5 characterization is correct.

6 BY MR. PLACITELLA:

7 Q. You have answered interrogatory  
8 questions about why cases were dismissed in  
9 the past against Engelhard involving talc  
10 litigation without being paid a penny;  
11 correct?

12 MR. FARRELL: Objection to form,  
13 foundation, misstates the report.

14 The witness has asked to see a  
15 copy of the responses you're  
16 referencing. Can you provide them to  
17 the witness.

18 BY MR. PLACITELLA:

19 Q. You can answer my question, sir.

20 MR. FARRELL: One moment,  
21 Mr. Steinmetz.

22 The witness has asked for a copy  
23 of the document about which you're  
24 asking him questions. Are you going  
25 to provide him with a copy of the

1 document?

2 MR. PLACITELLA: Could you read  
3 my question back, please.

4 MR. FARRELL: Is that a yes or a  
5 no, Mr. Placitella?

6 MR. PLACITELLA: Could you read  
7 my question back, please.

8 (The court reporter read back as  
9 follows:

10 "Q You have answered  
11 interrogatory questions about why  
12 cases were dismissed in the past  
13 against Engelhard involving talc  
14 litigation without being paid a  
15 penny; correct?"

16 MR. FARRELL: One moment,  
17 Mr. Steinmetz.

18 Let the record reflect, please,  
19 that the witness has asked to see a  
20 copy of the document about which  
21 Mr. Placitella is asking questions and  
22 plaintiff's counsel has refused to  
23 provide a copy to the witness.

24 Objection to form and foundation.

25 Go ahead, Mr. Steinmetz.

1                   THE WITNESS: So this is a good  
2                   example of why I'm having trouble  
3                   answering some of these questions and  
4                   what I feel aren't good  
5                   characterizations; because I know we  
6                   have talked about those types of  
7                   subjects, but I know I've never used  
8                   the terms "without paying a penny,"  
9                   for example.

10       BY MR. PLACITELLA:

11               Q. Fair enough.

12               A. So these are all  
13               characterizations that you're, that you're  
14               putting on the table and asking me to  
15               answer, but I -- without the document in  
16               front of me, I just don't know if your  
17               characterization is the way it was intended  
18               or the way it was written.

19               Q. Sir, have you answered questions  
20               about why people dismissed their cases  
21               without getting paid any money --

22                       MR. FARRELL: Object --

23       BY MR. PLACITELLA:

24               Q. -- when they were the talc case?

25                       MR. FARRELL: Objection to form,

1 foundation, still beyond the scope of  
2 the notice.

3 THE WITNESS: I think my answer's  
4 exactly the same. Again, I never used  
5 the term "without being paid any  
6 money." Again, it's characterization  
7 here; and whether the way you're  
8 saying it is the way it was answered  
9 or the way it was worded I don't know  
10 because I don't have it in front of  
11 me.

12 BY MR. PLACITELLA:

13 Q. Do you recall answering questions  
14 about people being -- dismissing cases  
15 without payment?

16 MR. FARRELL: Objection to form,  
17 foundation, beyond the scope of the  
18 notice, asked and answered.

19 The witness has asked to see a  
20 copy of the document you're  
21 referencing.

22 THE WITNESS: The same answer.  
23 We've talked about -- we've answered  
24 questions regarding that topic. I  
25 don't know if the characterization is,

1 is the same, is that same as we meant  
2 it because I don't have it in front of  
3 me.

4 BY MR. PLACITELLA:

5 Q. Okay. Have you provided  
6 interrogatories answers and certified them,  
7 concerning insurance information?

8 MR. FARRELL: Objection to form,  
9 foundation, beyond the scope of the  
10 notice.

11 THE WITNESS: I'd have to look at  
12 them again. We may have used the word  
13 "insurance" before. I know that I  
14 don't have any insurance information,  
15 so I couldn't have answered any  
16 detailed questions regarding that.  
17 Again, I'd have to see the document.

18 BY MR. PLACITELLA:

19 Q. Okay. Have you provided  
20 discovery responses concerning who at  
21 Engelhard was aware of the information that  
22 was provided in the Westfall case?

23 MR. FARRELL: Objection to form,  
24 foundation, beyond the scope of the  
25 notice.

1 THE WITNESS: Again, we have  
2 provided answers related to that  
3 topic. Again, I don't know what  
4 you're characterizing, so I don't -- I  
5 just can't answer whether or not your  
6 characterization is correct.

7 BY MR. PLACITELLA:

8 Q. I'm just asking a question, sir;  
9 okay? If you remember, you do. If you  
10 don't, you don't; okay?

11 Did you provide information in  
12 answer to interrogatories concerning  
13 Engelhard's document-retention policy?

14 MR. FARRELL: Objection to form,  
15 foundation, beyond the scope of the  
16 notice.

17 THE WITNESS: Again, we answered  
18 questions or included  
19 document-retention policy in some of  
20 the answers that we've provided. I  
21 just don't know if it, if it's the --  
22 if it -- if it's the same as the way  
23 you're characterizing it.

24 It's really hard to answer these  
25 questions without it in front of me.

1 BY MR. PLACITELLA:

2 Q. In preparation for today's  
3 deposition, did you go back and look at the  
4 discovery responses that you certified in  
5 this case?

6 MR. FARRELL: Objection to form.

7 THE WITNESS: Yes.

8 BY MR. PLACITELLA:

9 Q. Okay. So you know what's in  
10 there. When did you do that?

11 MR. FARRELL: Objection to form,  
12 argumentative.

13 THE WITNESS: I've read them over  
14 several times. I didn't memorize  
15 them. And as I mentioned, you know,  
16 just a couple questions back, the  
17 example of some of the words that  
18 you've used that mischaracterized, I  
19 think, what our answers were and I  
20 just -- again, without having it in  
21 front of me, I don't know if you're  
22 characterizing it the way we wrote it.  
23 I didn't memorize it by, you know --

24 BY MR. PLACITELLA:

25 Q. When's the last time you looked

1 at your discovery responses that you  
2 certified as true and accurate in these  
3 cases?

4 MR. FARRELL: Objection to form,  
5 foundation, argumentative.

6 THE WITNESS: I reviewed them  
7 last week, two nights ago, and last  
8 night.

9 BY MR. PLACITELLA:

10 Q. Okay. Do you recall that your  
11 discovery responses included information  
12 about the chronological listings of lawsuits  
13 file against Engelhard and BASF?

14 MR. FARRELL: Objection to form,  
15 foundation, beyond the scope of the  
16 notice.

17 THE WITNESS: We did answer  
18 questions regarding that.

19 BY MR. PLACITELLA:

20 Q. Okay. Did you answer questions  
21 concerning what people -- who at Cahill and  
22 BASF interacted with concerning document,  
23 document destruction?

24 MR. FARRELL: Same objections.

25 THE WITNESS: Again, I'd have to

1 look at the document. I don't recall  
2 that. We may have. I just don't  
3 recall the specific words.

4 BY MR. PLACITELLA:

5 Q. Do you recall certifying answers  
6 to interrogatories under oath concerning how  
7 document -- discovery responses were drafted  
8 by Engelhard and BASF?

9 MR. FARRELL: Objection to form,  
10 foundation, beyond the scope of the  
11 notice.

12 THE WITNESS: Same answer. We --  
13 I don't disagree that we may have done  
14 that. I just don't recall those  
15 specific words, and I don't have the  
16 document in front of me.

17 BY MR. PLACITELLA:

18 Q. Okay. Do you recall providing  
19 answers to interrogatories concerning what  
20 information was provided to the Engelhard  
21 board of directors concerning Emtal talc?

22 MR. FARRELL: Objection to form,  
23 foundation, beyond the scope of the  
24 notice.

25 THE WITNESS: The same answer.

1 I don't disagree that we have. I  
2 don't have it in front of me, and I  
3 can't remember the exact words.

4 MR. PLACITELLA: Okay. Do you  
5 want to take a couple minutes now?

6 MR. FARRELL: Sure.

7 THE VIDEOGRAPHER: The time is  
8 now 11:01 a.m. We're going off the  
9 record.

10 (Recess.)

11 THE VIDEOGRAPHER: The time is  
12 now 11:15 a.m. We are back on the  
13 record.

14 BY MR. PLACITELLA:

15 Q. Okay. Ready to proceed?

16 A. Yes.

17 Q. Okay. I want to focus my  
18 questions at this point on the time period  
19 1980 to 1987, that general timeframe; okay?

20 A. Yes.

21 Q. Okay. Can you tell me what  
22 general records were provided by Engelhard  
23 to Cahill for review in connection with the  
24 Emtal talc litigation?

25 MR. FARRELL: Objection to form.

1 THE WITNESS: That's a very broad  
2 question. And, I mean, if you have  
3 specific cases you'd want to talk  
4 about or specific instances, it would  
5 be easier. There were just several  
6 cases during that time period, and  
7 I --

8 BY MR. PLACITELLA:

9 Q. I'm not focusing on any case.  
10 I'm saying from the years 1980 to 1987, what  
11 records related to the litigation in general  
12 were transferred from Engelhard to Cahill  
13 Gordon, if you know?

14 MR. FARRELL: Objection to form.

15 THE WITNESS: Again, it's a  
16 really broad question. I can give you  
17 some examples of things I know.

18 I know, for example, that during  
19 the 1980s, at the end of the Westfall  
20 litigation, most of -- most or all of  
21 the records were, or copies of the  
22 records in the Westfall litigation  
23 were returned to Engelhard.

24 MR. FARRELL: Sorry. Can I have  
25 the question again?

1 THE WITNESS: I was -- yeah, I  
2 was wondering if, if it was -- which  
3 way you were talking about.

4 BY MR. PLACITELLA:

5 Q. I'll try to be a little more  
6 specific. Let me start this way: What is  
7 your understanding of the first lawsuit  
8 involving Emtal talc that was filed against  
9 Engelhard?

10 A. It was a case filed in 1979. It  
11 was the Westfall case. And Engelhard wasn't  
12 involved in that case until 1983.

13 Q. 1983. And prior to 1983, were  
14 any records concerning Emtal talc sent to  
15 Cahill Gordon for review?

16 MR. FARRELL: Objection to form.

17 THE WITNESS: In late 1982, in  
18 preparation for a subpoena that had  
19 been received by Engelhard, Cahill was  
20 hired to prepare information regarding  
21 Emtal talc. And so they were given  
22 access to all records that Engelhard  
23 had at the time regarding Emtal talc.

24 BY MR. PLACITELLA:

25 Q. So sometime in 1982, in order to

1 respond to a subpoena -- is that what you  
2 said?

3 A. Yes. That's my understanding.

4 Q. Okay.

5 -- Cahill Gordon was provided  
6 access to all of the records related to  
7 Emtal talc that were in possession of  
8 Engelhard? Is that, is that what you're  
9 saying?

10 MR. FARRELL: Objection to form.

11 THE WITNESS: Yes. And, and it  
12 may have been all those that were  
13 pertinent to the Emtal health record.  
14 I -- or to the Emtal testing record.  
15 I'm not sure if it was every single  
16 sales record. But my understanding is  
17 that, from testimony, is that all the  
18 records were available to Cahill.

19 BY MR. PLACITELLA:

20 Q. Now -- so would that include R&D  
21 records?

22 A. My understanding is that it did,  
23 yes.

24 Q. Sales records?

25 A. Yes, I understand that. I

1 believe so.

2 Q. Okay. Marketing records?

3 MR. FARRELL: Objection to form.

4 THE WITNESS: I don't know

5 specifically. I'm not sure that we

6 have any record of all the specifics

7 that were supplied.

8 BY MR. PLACITELLA:

9 Q. Okay. Insurance records?

10 A. I don't know.

11 Q. Auditors' records?

12 A. And --

13 MR. FARRELL: Objection to form.

14 THE WITNESS: I'm sorry. And

15 you're talking about in the lead-up to

16 Westfall?

17 BY MR. PLACITELLA:

18 Q. Correct.

19 A. I don't know. I don't know that

20 anybody knows all of this because this

21 occurred, as you know, 40 to 50 years ago.

22 So I'm just not sure that all of that was

23 available.

24 Q. Well, that's all I want to do. I

25 want to be very specific about what you know

1 Cahill was given access to; okay? So you  
2 know for sure R&D records; is that fair?

3 A. Yes, as I understand it.

4 Q. And sales records; is that fair?

5 A. I believe so.

6 Q. You don't know about insurance  
7 records?

8 A. I do not know.

9 Q. Okay. You don't know about  
10 auditor reports or anything like that?

11 MR. FARRELL: Objection to form.

12 THE WITNESS: I don't know.

13 BY MR. PLACITELLA:

14 Q. Okay.

15 A. I don't know that they would have  
16 been relevant at that point.

17 Q. And what about information from  
18 the insurance companies related to Emtal  
19 talc?

20 A. I don't know.

21 Q. So the two things that you do  
22 know -- and if there are others I want to  
23 just be clear -- are R&D records and sales  
24 records. Anything else that you do know for  
25 a fact that Cahill was given access to --

1 MR. FARRELL: Objection to form.

2 BY MR. PLACITELLA:

3 Q. -- in the early 1980s?

4 MR. FARRELL: Objection to form.

5 MR. BOISE: Also foundation.

6 THE WITNESS: I don't know.

7 BY MR. PLACITELLA:

8 Q. Okay. Now, you would say that  
9 they were given access to, to R&D and the  
10 sales records. How did that happen? Did  
11 somebody from Cahill -- did the records ever  
12 physically leave -- the original records,  
13 did they ever physically leave possession of  
14 Engelhard and be transferred to Cahill?

15 MR. FARRELL: Objection to form.

16 THE WITNESS: I'm not sure I know  
17 the answer to that. I know that you  
18 deposed other -- Mr. Dornbusch, who  
19 was involved in, in those early  
20 stages. So I would refer you to his  
21 testimony. I don't know the exact  
22 nature.

23 My understanding is that at some  
24 point the records were also  
25 transferred. Whether they were

1 original or not, I'm not sure what  
2 your definition of "original" is. But  
3 my understanding is that records were  
4 sent -- that records did go to Cahill.

5 BY MR. PLACITELLA:

6 Q. I know we had this debate before,  
7 so let's try to not spend a lot of time on  
8 it; okay? When I'm saying "original  
9 records," I'm saying the records that are in  
10 the possession of the R&D department that  
11 are relied upon by the research scientists  
12 in their day-to-day work that they referred  
13 to, were those records themselves that were  
14 in their files in original form transferred  
15 to Cahill or were copies transferred to  
16 Cahill?

17 MR. FARRELL: Objection to form  
18 and foundation.

19 THE WITNESS: I don't know that  
20 anybody knows that. It was 50 years  
21 ago.

22 BY MR. PLACITELLA:

23 Q. Well, who did you ask to find  
24 out?

25 A. I reviewed the testimony of

1 people. If anybody knew, it would have been  
2 Mr. Dornbusch. And if it wasn't in his  
3 testimony, I don't know that anybody would  
4 know. It was 50 years ago.

5 Q. Did you ask to speak to  
6 Mr. Dornbusch and find out?

7 A. No.

8 Q. Why not? You said he would know.

9 MR. FARRELL: Objection to form,  
10 foundation.

11 BASF has already stated in its  
12 objections and in meet-and-confer  
13 discussions with plaintiffs that we  
14 were not preparing the witness on  
15 privileged information. And that is  
16 part of the reason he did not have  
17 discussions with in-house or outside  
18 lawyers for discussion.

19 So all of your questions about  
20 "Why did you or did you not speak with  
21 lawyers for the company?" are subject  
22 to those objections.

23 BY MR. PLACITELLA:

24 Q. Okay. Mr. Hemstock --  
25 Dr. Hemstock was not a lawyer; right?

1 A. That's correct.

2 Q. He ran the R&D department; right?

3 A. Right.

4 Q. He was there in 1983 and 1984;  
5 correct?

6 A. Yes.

7 Q. He would know what records left  
8 his possession, wouldn't he?

9 MR. FARRELL: Objection to form  
10 and foundation, calls for speculation.

11 THE WITNESS: I think -- he's  
12 been deposed extensively on this. And  
13 I think he was asked -- and I'd have  
14 to look at his deposition testimony.  
15 I don't know that he recalls whether  
16 the originals were sent or whether  
17 copies.

18 I don't know that it matters  
19 whether they were, whether they were  
20 original or copy. But he, he would be  
21 the best person to speak to that. But  
22 I'm not sure he remembered in his  
23 testimony.

24 BY MR. PLACITELLA:

25 Q. Why didn't you just call him up

1 and ask him? You knew this was a topic for  
2 today.

3 MR. FARRELL: Objection to form  
4 and foundation, argumentative.

5 THE WITNESS: I guess I'm not  
6 sure why it matters if it was an  
7 original or a copy.

8 BY MR. PLACITELLA:

9 Q. Because that's part of the notice  
10 today. We want to know what was transferred  
11 and when.

12 Why didn't you call up  
13 Dr. Hemstock, who you say is the best person  
14 to know, and ask him what happened --

15 MR. FARRELL: Objection --

16 BY MR. PLACITELLA:

17 Q. -- did the records ever leave his  
18 possession?

19 MR. FARRELL: Objection to form,  
20 foundation, argumentative.

21 THE WITNESS: Again, I'd have to  
22 look at the deposition notice to see  
23 whether it says specifically original  
24 from the file of Dr. Hemstock. I  
25 don't think that's in the deposition

1 notice.

2 And again, I just don't see why  
3 it's important whether it was a copy  
4 of the original or the original  
5 itself. I think we've had this  
6 discussion before, but -- I don't know  
7 the difference. I don't know why it's  
8 significant.

9 BY MR. PLACITELLA:

10 Q. You're -- that's not your job.  
11 Your job is to answer my questions; okay?

12 My question is: The original  
13 scientific records that were in possession  
14 of research and development in the early  
15 1980s, as you sit here today, you don't know  
16 whether they ever left possession of  
17 Engelhard; correct?

18 MR. FARRELL: Objection to form,  
19 foundation, beyond the scope,  
20 argumentative.

21 THE WITNESS: Again, I don't know  
22 why it matters whether they were  
23 originals. We know that Cahill got  
24 the information that they needed to  
25 defend the cases with.

1 MR. PLACITELLA: Can you read my  
2 question back again.

3 (The court reporter read back as  
4 follows:

5 "Q You're -- that's not  
6 your job. Your job is to answer my  
7 questions; okay?

8 "My question is: The  
9 original scientific records that  
10 were in possession of research and  
11 development in the early 1980s, as  
12 you sit here today, you don't know  
13 whether they ever left possession of  
14 Engelhard; correct?")

15 MR. FARRELL: Same objections.

16 THE WITNESS: Again, it's a  
17 really broad question. I guess if we  
18 looked at individual documents, I  
19 could tell you whether I thought they  
20 were original or not. I'm not sure in  
21 every case what you mean by  
22 "original."

23 But once again, I'll say I don't  
24 know in exactly what form of what  
25 documents was sent to Cahill. This

1           was 50 years ago.

2       BY MR. PLACITELLA:

3           Q.    And you had access to the former  
4    head of research and development. And in  
5    preparation for the deposition, you never  
6    asked to speak with him. You never even  
7    picked up the phone to find out. Correct?

8           MR. FARRELL:  Objection to form,  
9                    foundation, misstates the record,  
10                   argumentative.

11           THE WITNESS:  I didn't call him  
12           because I saw -- I didn't see any need  
13           to determine whether or not a document  
14           that was sent to Cahill was an  
15           original -- whatever that means -- or  
16           a copy of the original.

17       BY MR. PLACITELLA:

18           Q.    Where did Cahill review the  
19    documents, the R&D documents? Were they  
20    reviewed at Engelhard, or were they reviewed  
21    at the Cahill offices?

22           MR. FARRELL:  Objection to form.

23           THE WITNESS:  I, I can't answer  
24           that. I'd have to look through the  
25           testimony and see if that was included

1 in the testimony from other people.

2 BY MR. PLACITELLA:

3 Q. So that's why I'm asking. Why  
4 didn't you ask somebody? Why did you rely  
5 only on depositions?

6 MR. FARRELL: Objection;  
7 argumentative.

8 THE WITNESS: Again, because, you  
9 know, in the week that we had to  
10 prepare for this deposition notice, I  
11 didn't think that was a significant  
12 issue to look into.

13 BY MR. PLACITELLA:

14 Q. You've been a rep for three  
15 years, and you never had a conversation with  
16 Dr. Hemstock. You've been asked questions  
17 about these documents over and over, and  
18 you've never had a conversation with him.  
19 Correct?

20 MR. FARRELL: Objection to form,  
21 foundation, misstates the record.

22 THE WITNESS: I haven't spoken to  
23 him; that's correct.

24 BY MR. PLACITELLA:

25 Q. Now -- so as you sit here, you do

1 not know whether Cahill Gordon went to  
2 Engelhard to look at documents or whether  
3 documents were shipped out of Engelhard and  
4 sent to Cahill Gordon; correct?

5 A. I understand that at some point  
6 Cahill Gordon had possession of the  
7 documents.

8 Q. When the original review was done  
9 by the Cahill Gordon lawyers of the R&D  
10 documents, as you sit here today, you do not  
11 know whether that review occurred at the  
12 offices of Cahill Gordon or in Menlo Park  
13 Terrace, New Jersey, at the corporate  
14 headquarters; correct?

15 MR. FARRELL: Objection to form.

16 THE WITNESS: Again, this was one  
17 incident that occurred 50 years ago.

18 I don't know if anybody knows that. I  
19 don't.

20 BY MR. PLACITELLA:

21 Q. So the answer to my question is  
22 you do not know where Cahill Gordon reviewed  
23 the records that are the subject of this  
24 deposition notice; correct?

25 A. As I mentioned, this is one

1 incident that occurred 50 years ago.

2 Somebody may know. I don't know. I don't  
3 know that anybody does know.

4 Q. Well, you didn't ask anybody, so  
5 you don't really -- you can't really answer  
6 the question; correct?

7 MR. FARRELL: Objection to form,  
8 foundation, misstates the witness'  
9 testimony, argumentative.

10 THE WITNESS: I'm sorry. What  
11 was the question again?

12 BY MR. PLACITELLA:

13 Q. You didn't ask anybody, so you  
14 don't have -- you don't know the answer to  
15 the question; correct?

16 MR. FARRELL: Objection to form,  
17 foundation, argumentative, misstates  
18 the witness' testimony.

19 THE WITNESS: Again, I've spoken  
20 with counsel, and I've looked at  
21 testimony from depositions of other  
22 people.

23 BY MR. PLACITELLA:

24 Q. Well, I can't rely on what your  
25 lawyers told you. I have to rely upon your

1 duty to prepare yourself to testify here  
2 today to provide information, the subject of  
3 the notice. And one of the base questions  
4 here is: What was reviewed of -- in the R&D  
5 department and where?

6 And you can't answer that  
7 question, can you?

8 MR. FARRELL: Objection to form,  
9 foundation, asked and answered.

10 Where in your notice does it say  
11 where?

12 BY MR. PLACITELLA:

13 Q. You can't answer that; right?

14 A. Again, I --

15 MR. FARRELL: One moment, please.

16 MR. PLACITELLA: I'm not  
17 answering your questions, Peter.  
18 Please don't do this. It's not a form  
19 question.

20 BY MR. PLACITELLA:

21 Q. You can't answer my question;  
22 correct, sir?

23 MR. FARRELL: I object -- excuse  
24 me. Excuse me.

25 Objection to form, foundation,

1           beyond the scope of the notice,  
2           misstates your own notice,  
3           argumentative.

4       BY MR. PLACITELLA:

5           Q.    Sir, you can't answer as you sit  
6       here today where and when Cahill Gordon  
7       reviewed the R&D documents concerning Emtal  
8       talc; correct?

9           MR. FARRELL:   Same objections.

10          THE WITNESS:   Once again, this is  
11       an incident that occurred 50 years  
12       ago.   I don't know if anybody knows.  
13       Someone may.   I don't know that.

14               Look, I, I could look through  
15       this, through the document, the  
16       topics, and see whether that was even  
17       something that I should have been  
18       prepared for, because I didn't see it  
19       as something worth looking into.

20       BY MR. PLACITELLA:

21           Q.    Okay.   When were the R&D  
22       documents -- well, let me ask you -- I'm  
23       going to cut to the chase.

24               You previously testified to  
25       something called "the Cahill compilation."

1 Do you recall that?

2 A. Yes, I do.

3 Q. And what is the Cahill  
4 compilation?

5 A. This was an aggregation,  
6 compilation of the testing data that had  
7 been generated by Engelhard -- and there  
8 were other documents involved in that too,  
9 published documents that had been  
10 accumulated, I guess, by either Engelhard or  
11 Cahill -- that was pulled together in  
12 October of 1982 by Cahill.

13 Q. Okay. And what information was  
14 made available to Cahill when they put that  
15 compilation together?

16 MR. FARRELL: Objection to form,  
17 asked and answered.

18 MR. BOISE: Also foundation.

19 THE WITNESS: According to what I  
20 understand, all of the testing record  
21 that was necessary to respond to the  
22 subpoena that had been received by  
23 Engelhard.

24 BY MR. PLACITELLA:

25 Q. And you say "according to what I

1 understand." What is the basis of your  
2 understanding?

3 MR. FARRELL: Objection to form.

4 THE WITNESS: The basis of my  
5 understanding is the testimony that  
6 I've read from Dornbusch and the first  
7 page of the March 19 -- or -- yeah --  
8 March 1983 Hemstock deposition, in  
9 which on the first page the attorney  
10 present describes the information that  
11 was collected and what was held as  
12 privileged.

13 BY MR. PLACITELLA:

14 Q. So your testimony is that  
15 whatever was described in the Hemstock  
16 deposition is what was made available to  
17 Cahill Gordon from the R&D department?

18 MR. FARRELL: Can I have the  
19 question again, please.

20 (The court reporter read back the  
21 pending question.)

22 MR. FARRELL: Objection to form,  
23 foundation, misstates the witness'  
24 testimony.

25 THE WITNESS: So my testimony was

1           that that first page of the document  
2           describes at a high level the  
3           information that was supplied.

4           It doesn't go into detail about  
5           specific testing or studies. But it  
6           describes the information that was  
7           provided and states that some of the  
8           documents, a few of the documents,  
9           were being held as privileged.

10           I'd have to look at the document  
11           itself again to get into much more  
12           detail.

13       BY MR. PLACITELLA:

14           Q.    So all of the information that  
15           was referenced in the Hemstock deposition  
16           was made available by Engelhard, and that is  
17           the subject of the Cahill compilation?

18           MR. FARRELL:  Objection to  
19           form --

20       BY MR. PLACITELLA:

21           Q.    Is that what you're saying?

22           MR. FARRELL:  Objection to form  
23           and foundation.

24           THE WITNESS:  No, I'm -- my  
25           testimony was that all of the testing

1 information was supplied to Cahill,  
2 and that was described on the first  
3 page of the deposition.

4 BY MR. PLACITELLA:

5 Q. Okay. Well, we'll look at that  
6 at lunchtime.

7 Where -- who did the review?

8 A. The review was -- the  
9 compilation?

10 Q. Yes.

11 A. Was put together by Cahill.

12 Q. Who?

13 A. I believe testimony is that  
14 Mr. Sloane and maybe Mr. Hyde were involved  
15 in it.

16 Q. And where was that review done?

17 MR. FARRELL: Objection to form,  
18 foundation, asked and answered, beyond  
19 the scope of the notice.

20 THE WITNESS: It was done at  
21 Cahill, wherever that is. Again, I'm  
22 not sure whether they started at  
23 Engelhard and moved to Cahill, whether  
24 the documents were started at Cahill  
25 and moved to Engelhard -- or started

1 at Engelhard and moved to Cahill after  
2 the first meeting. I don't know the  
3 very detailed specifics of the  
4 process. I know that it was conducted  
5 by Cahill.

6 BY MR. PLACITELLA:

7 Q. Do you know whether the review of  
8 the documents that ended up in the Cahill  
9 compilation was conducted at Engelhard or  
10 not?

11 MR. FARRELL: Objection to form.

12 THE WITNESS: I think you asked  
13 me that question before, and I'm not  
14 sure physically how it occurred.  
15 Somebody may know. I don't know  
16 physically. My understanding is that  
17 it occurred at Cahill.

18 BY MR. PLACITELLA:

19 Q. So is it your understanding,  
20 then, that all of the research and  
21 development documents that were in  
22 possession of Engelhard concerning the  
23 testing of Emtal talc was transferred by  
24 Engelhard to Cahill Gordon and then reviewed  
25 at the offices of Cahill Gordon?

1 MR. FARRELL: Objection to form  
2 and foundation, misstates his  
3 testimony.

4 THE WITNESS: The extent of my  
5 knowledge is that all of the data were  
6 made available to Cahill Gordon. I  
7 don't know the details of the  
8 logistics of the process and how and  
9 when everything occurred.

10 BY MR. PLACITELLA:

11 Q. So as you sit here today, you  
12 don't know whether all of the R&D documents  
13 related to Emtal talc were, in fact,  
14 transferred to Cahill Gordon for review;  
15 correct?

16 MR. FARRELL: Objection to form,  
17 foundation, misstates the witness'  
18 testimony.

19 THE WITNESS: No. My -- no, my  
20 understanding is that based on the  
21 context in which the compilation was  
22 put together -- getting ready for a  
23 subpoena and the fact that Cahill had  
24 just been brought in as outside  
25 counsel -- and based on testimony

1 from, I believe, Mr. Dornbusch, all  
2 the data was made available.

3 BY MR. PLACITELLA:

4 Q. Okay. So to be clear, all of the  
5 R&D data related to Emtal talc is your  
6 understanding was transferred by Engelhard  
7 to Cahill Gordon for Mr. Hyde and  
8 Mr. Steinmetz to review; correct?

9 MR. BOISE: Objection.

10 MR. FARRELL: Objection to form.

11 THE WITNESS: The data that were  
12 available at the time, in 1979.

13 BY MR. PLACITELLA:

14 Q. So the answer's yes?

15 MR. FARRELL: Objection to form.

16 THE WITNESS: Yes.

17 BY MR. PLACITELLA:

18 Q. Okay. So nobody at Engelhard  
19 made some type of review to determine what  
20 R&D contaminate was going to be sent;  
21 everything was sent. Correct?

22 MR. FARRELL: Objection to form,  
23 foundation, misstates the witness'  
24 testimony.

25 THE WITNESS: I don't know. This

1 is -- these are things that occurred  
2 50 years ago. These are actions and  
3 activities that I don't have any  
4 information on.

5 BY MR. PLACITELLA:

6 Q. So you don't know whether anybody  
7 did any kind of screening to determine what  
8 was going to be sent to Cahill for review of  
9 the R&D documents; correct?

10 MR. FARRELL: Objection to form,  
11 foundation, misstates the witness'  
12 testimony.

13 THE WITNESS: There may be  
14 something in the record. I don't  
15 know.

16 BY MR. PLACITELLA:

17 Q. Do you know whether copies were  
18 made of records and sent to Cahill for  
19 review by Sloane and Hyde or original  
20 documents?

21 MR. FARRELL: Objection to form,  
22 foundation, asked and answered, beyond  
23 the scope of the notice.

24 THE WITNESS: I do think that we  
25 talked about this earlier. And I

1 don't know whether copies or originals  
2 were sent. I'm actually not even sure  
3 what the definition of an "original"  
4 is in some cases, so I don't know.

5 BY MR. PLACITELLA:

6 Q. Here's the definition: It's in  
7 Mr. Hemstock's file. He says, I want to  
8 keep it; make a photocopy and send it.

9 Did you get that?

10 MR. FARRELL: Objection,  
11 argumentative.

12 BY MR. PLACITELLA:

13 Q. Did that ever happen?

14 MR. FARRELL: Objection to form,  
15 argumentative.

16 BY MR. PLACITELLA:

17 Q. Did that ever happen?

18 A. I don't know.

19 Q. Okay. Do you know -- so the  
20 Cahill compilation that was constructed,  
21 what can you tell me about what you know  
22 about that?

23 MR. FARRELL: Objection to form.

24 THE WITNESS: Essentially what I  
25 said before: It was a compilation of

1 the test results that had been  
2 generated by Engelhard or for  
3 Engelhard. It also included some  
4 documents that Engelhard had prepared  
5 for distribution. And I believe it  
6 also included some publicly available  
7 and published reports.

8 BY MR. PLACITELLA:

9 Q. Okay. So -- and I know we did a  
10 lot of this the last time, so I'm not asking  
11 those questions all over again. I'm sure  
12 you're happy about that.

13 Let me -- so after the R&D  
14 documents were sent by Engelhard to Cahill,  
15 a compilation was created by whom?

16 MR. FARRELL: Objection to form,  
17 foundation, mis- --

18 BY MR. PLACITELLA:

19 Q. After the review, who, who  
20 created it?

21 MR. FARRELL: Objection to form,  
22 foundation, misstates his testimony.

23 THE WITNESS: Okay. Once again,  
24 I don't know whether it was sent to  
25 them or where they actually conducted

1           this review.

2                   But my understanding is that the,  
3           that the review was overseen by  
4           Mr. Sloane and maybe Mr. Hyde at  
5           Cahill.

6   BY MR. PLACITELLA:

7           Q.    Now, when you say "overseen,"  
8   what do you mean by that?  Other people  
9   looked at it too?

10          A.    I don't know of anybody else.  I  
11   just -- we may have responded to this in an  
12   interrogatory.  I'd have to look at it.  But  
13   I know that they were involved.

14          Q.    And then a memo was put together?

15                  MR. FARRELL:  Objection to form.

16                  THE WITNESS:  There wasn't -- I'm  
17   not sure what you're referring to when  
18   you say a "memo."

19   BY MR. PLACITELLA:

20          Q.    Well, you have a compilation that  
21   you've produced.  So -- so we know that  
22   we're all talking about the same thing,  
23   here's Exhibit 1.

24                  (A document previously marked as  
25   Exhibit 1 was introduced.)

1 BY MR. PLACITELLA:

2 Q. Do you recognize that?

3 A. Yes.

4 Q. Okay. Is that the compilation  
5 we're talking about?

6 A. Yes --

7 MR. FARRELL: Object --

8 THE WITNESS: -- this --

9 MR. FARRELL: Objection to form.

10 THE WITNESS: This is the  
11 compilation that I've seen. It  
12 contains spacers for privileged  
13 documents, which I haven't seen.

14 BY MR. PLACITELLA:

15 Q. And is it your understanding that  
16 there was a cover memo that went with the  
17 compilation?

18 A. My understanding is that the  
19 privilege log does list a cover memo that  
20 was sent with this.

21 Q. Okay. And the cover memo was  
22 from whom to whom?

23 A. My understanding, it was from  
24 Hyde to Dornbusch.

25 Q. Okay. And when -- and is it your

1 understanding, then, that this compilation  
2 with the cover memo was sent back to Arthur  
3 Dornbusch?

4 MR. FARRELL: Objection to form.

5 THE WITNESS: I'm not sure what  
6 you mean by "back to." My  
7 understanding is that the memo and  
8 this accompanying it were sent to  
9 Mr. Dornbusch.

10 BY MR. PLACITELLA:

11 Q. Right. And did Cahill Gordon  
12 retain a copy?

13 MR. BOISE: Object to form,  
14 foundation.

15 THE WITNESS: I don't know. I'd  
16 have to review all the testimony. I  
17 don't recall. Probably the person  
18 that would know would be either Sloane  
19 or Hyde. I know you didn't depose  
20 them, but they would probably know.

21 BY MR. PLACITELLA:

22 Q. Were you prevented from speaking  
23 to them?

24 MR. FARRELL: Objection to form,  
25 foundation.

1 THE WITNESS: No. I guess I  
2 figured that if you want to know, you  
3 would have deposed them. And so I  
4 didn't see it as that important.

5 BY MR. PLACITELLA:

6 Q. Well, I'm asking you. That's why  
7 we're here.

8 MR. FARRELL: Objection;  
9 argumentative.

10 BY MR. PLACITELLA:

11 Q. Did you ask to speak to him?

12 MR. FARRELL: Objection,  
13 argumentative.

14 THE WITNESS: No, I didn't.

15 MR. FARRELL: I'll also note for  
16 the record that our objections and  
17 responses to the notice which  
18 addresses the questions Mr. Placitella  
19 was asking on privilege issues have  
20 been attached as Exhibit 10, Steinmetz  
21 Exhibit 10 to this deposition.

22 BY MR. PLACITELLA:

23 Q. Do you know -- do you recall that  
24 a number of those exhibits refer to  
25 attachments that aren't part of the Cahill

1 compilation? Do you recall that?

2 MR. FARRELL: Objection to form  
3 and foundation.

4 THE WITNESS: I'm sorry. Could  
5 you repeat that.

6 BY MR. PLACITELLA:

7 Q. Do you recall that a number of  
8 those exhibits refer to attachments that  
9 aren't part of that compilation?

10 MR. FARRELL: Same objections.

11 THE WITNESS: Yes. I think, I  
12 think we have talked about that in the  
13 past. And, of course, the problem in  
14 trying to recreate what happened 50  
15 years ago is that we're trying to,  
16 we're trying to understand why  
17 something went into the compilation  
18 and why it didn't.

19 So, for example, there may have  
20 been a photograph that was referred to  
21 in a document, but there's -- it's  
22 very possible that that photograph no  
23 longer existed when the, when the  
24 information was collected in 1979.

25 There were other examples where

1 people had left the company and  
2 retired and we don't know what  
3 happened to their files. So parts of  
4 the file -- you know, attachments to  
5 some of the documents may have been  
6 lost.

7 So we're not sure what exactly,  
8 what exactly existed in 1979. So  
9 we're not sure whether attachments  
10 that weren't attached to documents in  
11 this compilation were actually ever  
12 available in 1979 when it was  
13 prepared.

14 BY MR. PLACITELLA:

15 Q. Okay. What was my question?

16 MR. FARRELL: Objection,  
17 argumentative.

18 THE WITNESS: I -- if you could  
19 ask it again, I'll -- I can -- I think  
20 I answered it. But if you could  
21 repeat it, I could --

22 BY MR. PLACITELLA:

23 Q. Do you have any idea what my  
24 question was?

25 MR. FARRELL: Objection,

1 argumentative.

2 THE WITNESS: I thought I did  
3 when I answered. But if you could  
4 repeat it, I could try again.

5 BY MR. PLACITELLA:

6 Q. Do you know, when these documents  
7 were reviewed by Mr. Hyde and Mr. Sloane,  
8 whether they actually contained the  
9 attachments that are missing today?

10 MR. FARRELL: Objection to form,  
11 foundation.

12 THE WITNESS: Yeah, again, we  
13 don't know. Like I said, this was 50  
14 years ago. A lot of things happened  
15 between the time that those  
16 attachments were prepared and 1979.  
17 And they may have been available; they  
18 may not have been available. We just  
19 don't know.

20 What we do know is they had an  
21 awful lot of information that they to  
22 put in the compilation and it included  
23 the full testing records that were  
24 both beneficial and potentially  
25 negative for Engelhard. So they -- it

1 appears that they had everything  
2 available.

3 BY MR. PLACITELLA:

4 Q. What was my question?

5 MR. FARRELL: Objection,  
6 argumentative.

7 THE WITNESS: I think it had --  
8 again, I think I answered it in the,  
9 in the first part of my answer. You  
10 were asking about the general presence  
11 of some of the attachments and whether  
12 they were available.

13 BY MR. PLACITELLA:

14 Q. And the answer to my question is  
15 you don't know, when Hyde and Sloane  
16 reviewed the documents to prepare this  
17 compilation, whether they were available or  
18 not; correct?

19 MR. FARRELL: Objection to form  
20 and foundation.

21 THE WITNESS: That's right. We  
22 don't know whether they existed; yes.

23 BY MR. PLACITELLA:

24 Q. Okay. Now, these memos and the  
25 compilation, they, they reference many

1 former employees, correct, of Engelhard?

2 A. I'm sorry, you mean the memos  
3 within the compilation?

4 Q. Yes.

5 A. Yes, there are several people  
6 included in them.

7 Q. Did you ever ask to speak to any  
8 of the people that are mentioned in any of  
9 these memos?

10 MR. FARRELL: Objection to form  
11 and foundation.

12 THE WITNESS: No.

13 BY MR. PLACITELLA:

14 Q. They -- these memos also refer to  
15 outside consultants that were hired by  
16 Engelhard to do testing; correct?

17 A. Yes, in some cases.

18 Q. Did you ever ask to speak to any  
19 of those consultants?

20 A. I did not. I know that our  
21 counsel has contacted them for information  
22 over the past few years, but I did not.

23 Q. Which consultants did they  
24 contact over -- for information over the  
25 past few years that are contained in the

1 Cahill compilation?

2 A. Again, this is going back to  
3 testimony from a year ago. I didn't prepare  
4 for this. But I know that we have contacted  
5 some of the outside testing laboratories in  
6 the past for samples that they've maybe  
7 retained, that kind of a thing.

8 Q. Okay. The -- it's my  
9 understanding that the compilation was found  
10 in a file that was once maintained by Arthur  
11 Dornbusch; is that fair?

12 MR. FARRELL: Objection to form,  
13 foundation, misstates the record --

14 THE WITNESS: I know --

15 MR. BOYLE: Objection.

16 MR. FARRELL: -- beyond the scope  
17 of the notice.

18 MR. BOYLE: Hold on a second.  
19 This is John Boyle.

20 Objection to form.

21 Chris, could you please point him  
22 to the testimony where that  
23 understanding comes from?

24 MR. PLACITELLA: Just asking him  
25 a question.

1 MR. BOYLE: I'm sorry, Chris? I  
2 couldn't hear what you said.

3 MR. PLACITELLA: I'm just asking  
4 him a question: Is that understanding  
5 correct?

6 MR. FARRELL: Objection to form,  
7 foundation, misstates the record,  
8 beyond the scope of the notice.

9 BY MR. PLACITELLA:

10 Q. Well, let me ask the question  
11 this way: What is your understanding where  
12 that document was found?

13 MR. FARRELL: Same objections,  
14 beyond the scope.

15 THE WITNESS: So I know I've  
16 testified to this in the past. And I  
17 believe I did say it was in a file  
18 with "Dornbusch" on it.

19 Talking to counsel, it appears  
20 that we know it was found off-site, in  
21 off-site storage. And my  
22 understanding is that the reason we  
23 believe it's Dornbusch is because the  
24 memo, the privileged memo that I  
25 haven't seen, was addressed to

1 Dornbusch. So that's my  
2 understanding.

3 BY MR. PLACITELLA:

4 Q. So the basis for your testimony  
5 is information you received from your  
6 lawyers?

7 MR. FARRELL: Objection to form,  
8 foundation, misstates his testimony.

9 THE WITNESS: It's information  
10 that I received from counsel in  
11 preparing for, you know, these  
12 questions.

13 BY MR. PLACITELLA:

14 Q. Okay. Now, do you know whether  
15 the file with the memo and all the things  
16 that are withheld, was that an original  
17 document or a copy of the document? Was  
18 that the original document that Dornbusch  
19 was sent, or was it a photocopy?

20 MR. FARRELL: Objection to form,  
21 foundation, beyond the scope of the  
22 notice.

23 THE WITNESS: I don't know. I  
24 haven't seen the copy that -- I don't  
25 believe I've seen the copy with

1           privileged documents. I know I  
2           haven't seen any of the document,  
3           but -- I don't recall if I have. So  
4           if I have seen it, I don't recall  
5           whether it was an original or not.

6       BY MR. PLACITELLA:

7           Q.    So as you sit here today, you do  
8           not know whether the document that's in the  
9           possession of your attorneys is an original  
10          or a photocopy of the document that was sent  
11          to Arthur Dornbusch; fair?

12               MR. FARRELL:  Objection to form,  
13           foundation, beyond the scope of the  
14           notice.

15               THE WITNESS:  I'm just not sure.

16       BY MR. PLACITELLA:

17           Q.    So the answer is you don't know?

18           A.    I don't know. I'm not sure.

19               MR. FARRELL:  Same objections.

20       BY MR. PLACITELLA:

21           Q.    Okay. How do you know it's a  
22           complete copy if you've never seen the full  
23           thing?

24               MR. FARRELL:  Objection to form,  
25           foundation, asked and answered.

1 THE WITNESS: I can only go by  
2 what I see. And I see that this  
3 includes a number, a large number of  
4 documents. And then there a large  
5 number of spacers with tabs showing --  
6 or spacers showing that there's  
7 privileged information not included.

8 BY MR. PLACITELLA:

9 Q. How do you know whether this  
10 document that was found in the files of BASF  
11 was a complete and accurate copy?

12 MR. FARRELL: Same objections.

13 THE WITNESS: I have no reason to  
14 think it wasn't.

15 BY MR. PLACITELLA:

16 Q. How do you know that it wasn't?

17 MR. FARRELL: Objection.

18 BY MR. PLACITELLA:

19 Q. How do you know that it was?

20 A. I have no reason to think --

21 MR. FARRELL: One moment. Which  
22 question are you asking?

23 BY MR. PLACITELLA:

24 Q. I'm asking: As you sit here  
25 today, can you testify that the document

1 that was found in the BASF files was a  
2 complete and accurate document --

3 MR. FARRELL: Objection --

4 BY MR. PLACITELLA:

5 Q. -- compilation?

6 MR. FARRELL: Objection to form  
7 and foundation.

8 THE WITNESS: And I'm not sure  
9 what you mean by "complete and  
10 accurate compilation."

11 BY MR. PLACITELLA:

12 Q. It had everything that was in  
13 there the day it was signed and sent to  
14 Mr. Dornbusch?

15 MR. FARRELL: Same objections.

16 THE WITNESS: Again, I haven't  
17 seen the original. I have no reason  
18 to think it wasn't.

19 BY MR. PLACITELLA:

20 Q. As you sit here today, you cannot  
21 testify under oath that the document that  
22 was found in the BASF files was a true and  
23 accurate copy of the exact document that was  
24 sent to Mr. Dornbusch by Mr. Hyde in 1982;  
25 correct?

1 MR. FARRELL: Objection to form,  
2 foundation, asked and answered.

3 You're now harassing the witness.

4 THE WITNESS: I haven't seen it.  
5 It contains privileged information  
6 that I'm not allowed to see, so I  
7 can't answer that question. I don't  
8 know if it's, if it's complete or not.  
9 I have no reason to think it's not.

10 BY MR. PLACITELLA:

11 Q. Was it a bound document?

12 MR. FARRELL: Same objections,  
13 asked and answered.

14 THE WITNESS: I, I don't know. I  
15 believe. I don't know.

16 BY MR. PLACITELLA:

17 Q. Okay. The -- so after these  
18 documents were, these R&D documents were  
19 sent by Engelhard to Cahill Gordon, someone  
20 reviewed the documents. And to your  
21 understanding, that was Hyde and Sloane;  
22 correct?

23 MR. FARRELL: Objection to form  
24 and foundation.

25 THE WITNESS: Somebody at Cahill

1 would have had to have reviewed them  
2 and prepared the document. I don't  
3 work at Cahill. I never did. I would  
4 think that would be a question better  
5 presented to Sloane or Hyde.

6 BY MR. PLACITELLA:

7 Q. Okay. Well, do you know whether  
8 all of the R&D documents ended up in that  
9 compilation or somebody made a selection  
10 from what was provided and they ended up in  
11 the compilation?

12 MR. FARRELL: Objection to form  
13 and foundation.

14 THE WITNESS: There's a pretty  
15 broad range of information in here.  
16 It appears to me that it would be  
17 everything. Again, that would be a  
18 question that would be better put to  
19 Sloane or Hyde.

20 BY MR. PLACITELLA:

21 Q. Well, Engelhard would know if  
22 everything that was in their testing  
23 documents was in that compilation; correct?

24 MR. FARRELL: Objection to form.

25 THE WITNESS: Again, I don't know

1 exactly what was available in 1979. I  
2 know that there's a broad range of  
3 information in here.

4 BY MR. PLACITELLA:

5 Q. Did you ever ask Dr. Hemstock if  
6 all the testing documents that were in the  
7 R&D department ended up in the Cahill  
8 compilation?

9 MR. FARRELL: Objection to form  
10 and foundation, asked and answered.

11 THE WITNESS: I did not ask him  
12 that. It may be in his testimony.  
13 And I would have to look at all his  
14 testimony to see whether he addressed  
15 that issue.

16 BY MR. PLACITELLA:

17 Q. So as you sit here today, you  
18 don't know whether everything that was sent  
19 from Engelhard to Cahill Gordon concerning  
20 the Emtal talc testing ended up in P1;  
21 correct?

22 MR. FARRELL: Objection to form,  
23 foundation, asked and answered,  
24 misstates Mr. Steinmetz's testimony.

25 THE WITNESS: I'm sorry --

1 MR. FARRELL: He's now answered  
2 this question three or four times.

3 THE WITNESS: Could, could you  
4 repeat it.

5 BY MR. PLACITELLA:

6 Q. Yes, sir. As you sit here today,  
7 you don't know whether all of the  
8 information that was transferred by  
9 Engelhard to Cahill from the R&D department  
10 relating to the testing of Emtal talc ended  
11 up in the Cahill compilation known as P1?  
12 You can't testify to that under oath;  
13 correct?

14 MR. FARRELL: Objection to form,  
15 foundation, asked and answered,  
16 misstates Mr. Steinmetz's testimony.

17 THE WITNESS: As I mentioned, my  
18 understanding is that testimony  
19 indicates that all the information was  
20 provided, access to all the  
21 information was provided to Cahill.  
22 They took the information, prepared  
23 the compilation. I have no reason to  
24 think that they didn't put it all in  
25 here. I don't know everything that

1           was available at the time, so I can't  
2           answer that.

3   BY MR. PLACITELLA:

4           Q.    So you don't know?

5           MR. FARRELL:  Objection to form,  
6           foundation, asked and answered,  
7           misstates the witness' testimony.

8           THE WITNESS:  I can't answer what  
9           was available or wasn't available --  
10          what was not available 50 years ago if  
11          there was no inventory taken, for  
12          example.

13  BY MR. PLACITELLA:

14          Q.    And as far as you know, there was  
15          no inventory of exactly what was sent by  
16          Engelhard to Cahill related to the testing  
17          of Emtal talc; fair?

18          MR. FARRELL:  Objection to form,  
19          foundation, misstates the witness'  
20          testimony, asked and answered.

21          THE WITNESS:  There may have  
22          been.  This was something that  
23          happened 50 years ago.  I'm not aware  
24          of it.

25  BY MR. PLACITELLA:

1 Q. As you sit here today, you cannot  
2 testify under oath that there is any  
3 evidence of an inventory of what was being  
4 sent by Engelhard to Cahill Gordon related  
5 to the talc testing from the R&D department  
6 of Engelhard; correct?

7 MR. FARRELL: Objection to form,  
8 foundation, misstates the witness'  
9 testimony, asked and answered.

10 THE WITNESS: This was 50 years  
11 ago. There may be something  
12 available. I don't know of it, so I  
13 can't comment on it.

14 BY MR. PLACITELLA:

15 Q. Did you ask whether it was  
16 available?

17 A. No.

18 Q. Why not?

19 MR. FARRELL: Objection --

20 BY MR. PLACITELLA:

21 Q. It was part of the notice.

22 MR. FARRELL: Objection to form,  
23 argumentative.

24 BY MR. PLACITELLA:

25 Q. Why not?

1           A.     Because we had one week from the  
2     time we got the deposition notice, and you  
3     can only do so much in a week and you have  
4     to prioritize where you put your time.

5           Q.     So who would you call to find out  
6     now?

7                     MR. FARRELL:   Objection to form.

8                     THE WITNESS:   I don't know.

9     BY MR. PLACITELLA:

10           Q.     Okay. After the review of the  
11     R&D information was done at Cahill that was  
12     provided by Engelhard, what happened to  
13     those documents, the documents that were  
14     reviewed by Hyde and Sloane?

15                     MR. BOISE:   Object to the form  
16     and foundation.

17                     THE WITNESS:   Once again, these  
18     are internal Cahill activities that  
19     you're asking about. I think it would  
20     probably be better directed towards  
21     Sloane or Hyde. I can't speak to what  
22     they did with every piece of paper  
23     that they had.

24     BY MR. PLACITELLA:

25           Q.     Well, was -- were the documents,

1 the R&D documents that were sent by  
2 Engelhard to Cahill ever returned to  
3 Engelhard?

4 MR. FARRELL: Objection to form.

5 THE WITNESS: I believe

6 Mr. Dornbusch testified that Westfall  
7 documents were returned to Engelhard.

8 BY MR. PLACITELLA:

9 Q. I'm not asking about Westfall  
10 documents yet. I'm asking about the R&D  
11 documents that were sent by Cahill -- I mean  
12 by Engelhard to Cahill. Were all of those  
13 documents re- -- sent back to Engelhard?

14 MR. FARRELL: Objection to form.

15 THE WITNESS: I'm trying to  
16 remember what you asked Mr. Dornbusch.  
17 I'm not sure if you asked him that  
18 question. If you did, then he would  
19 have answered it.

20 I, I don't recall the testimony.  
21 And again, Mr. Sloane or Hyde probably  
22 could answer that.

23 BY MR. PLACITELLA:

24 Q. Okay. So as you sit here today,  
25 you don't know what physically happened to

1 the documents that were reviewed by the  
2 Cahill, the R&D documents that were reviewed  
3 by Cahill that were sent to Cahill by  
4 Engelhard; correct?

5 MR. FARRELL: Objection to form,  
6 foundation, misstates his testimony.

7 THE WITNESS: Correct. I think  
8 it would be better -- a question  
9 better put to one of the principal  
10 players in that activity, either  
11 Sloane or Dornbusch or Hyde.

12 BY MR. PLACITELLA:

13 Q. Okay. Now, you have referred on  
14 a number of occasions to materials in the  
15 Westfall case. Do you recall that?

16 MR. FARRELL: Objection to form.

17 THE WITNESS: Not specifically  
18 in, in detail. I -- we have talked  
19 about the Westfall case.

20 BY MR. PLACITELLA:

21 Q. Okay. It's my understanding --  
22 I'm trying to understand your testimony --  
23 that in conjunction with the Westfall case  
24 certain information was provided by  
25 Engelhard, the client, to the Cahill Gordon

1 law firm in order to respond to discovery.

2 Fair?

3 A. Yes, I believe it was for  
4 discovery. Again, I'm not familiar with all  
5 the legal aspects of the process. But I  
6 believe it was for discovery, yes.

7 Q. And you understand that in the  
8 Westfall case depositions were taken of  
9 Engelhard scientists; correct?

10 A. Yes.

11 Q. Okay. And you understand that  
12 the deposition was taken of Mr. Hemstock --  
13 Dr. Hemstock; correct?

14 A. Yes.

15 Q. And Dr. Triglia?

16 A. Yes. It might have been  
17 Mr. Triglia. I'm not sure if he was a  
18 doctor.

19 Q. And Peter Gale?

20 A. Yes.

21 Q. Who else was deposed from  
22 Engelhard that you're aware of?

23 A. I believe Howard Shafer was  
24 deposed, although we don't have a copy of  
25 the transcript.

1 Q. Now -- and at their depositions,  
2 various exhibits were marked; correct?

3 A. Yes.

4 Q. And many of those exhibits  
5 pertain to the testing of Emtal talc for  
6 asbestos; correct?

7 A. Yes. I haven't reviewed these  
8 deposition transcripts recently; but, yes,  
9 as I recall.

10 Q. Okay. And at the conclusion of  
11 that case, what happened to the original  
12 transcripts that were taken in those cases?

13 MR. FARRELL: Objection to form.

14 THE WITNESS: I haven't seen any  
15 specific information regarding when or  
16 who or how, how they were sent. My  
17 understanding from testimony is that  
18 they were returned to Engelhard.

19 BY MR. PLACITELLA:

20 Q. Okay. And what happened to the  
21 original exhibits that were marked at those  
22 depositions?

23 MR. FARRELL: Objection to form.

24 THE WITNESS: My understanding is  
25 that those would have been returned to

1 Engelhard.

2 BY MR. PLACITELLA:

3 Q. Okay. And after the original  
4 depositions and original exhibits were  
5 returned to Engelhard, what happened to  
6 them?

7 MR. FARRELL: Objection to form.

8 THE WITNESS: According to the --  
9 I'm sorry. You're referring to the  
10 documents that Engelhard had, then, at  
11 that point?

12 BY MR. PLACITELLA:

13 Q. Correct.

14 A. My understanding from  
15 Mr. Dornbusch's testimony is that they were  
16 discarded at some point pursuant to the  
17 Engelhard document-retention policy.

18 Q. Okay. So your understanding is  
19 that those original depositions and original  
20 exhibits were destroyed by Engelhard; fair?

21 MR. FARRELL: Objection to form.

22 THE WITNESS: That's my  
23 understanding. I know that in the  
24 testimony they weren't specifically  
25 enumerated like that. But I believe

1           that, in general, Dornbusch said that  
2           the documents were, documents were  
3           discarded.

4       BY MR. PLACITELLA:

5           Q.    Now, do you know that --  
6           whether -- when the documents were marked at  
7           the depositions, whether they were the  
8           actual original scientific records or not?

9                   MR. FARRELL:  Objection to form  
10           and foundation, beyond the scope of  
11           the notice.

12                   THE WITNESS:  I believe we've  
13           discussed this before.  I don't know  
14           in each case whether everything was an  
15           original, whether it was a copy of an  
16           original, or whether it was an  
17           original copy that was sent out.

18       BY MR. PLACITELLA:

19           Q.    You're aware that at least some  
20           original scientific documents were marked at  
21           those depositions; correct?

22                   MR. FARRELL:  Objection to form  
23           and foundation, beyond the scope of  
24           the notice.

25                   THE WITNESS:  I'm not aware of

1           that. I'd have to go back and, and  
2           look at the notice -- at the  
3           transcripts again and at the  
4           information that we have regarding  
5           that. I don't remember that.

6       BY MR. PLACITELLA:

7           Q.    Okay. The...

8                   (A document previously marked as  
9       Exhibit 225 was introduced.)

10      BY MR. PLACITELLA:

11           Q.    Let me show you what's been  
12       marked Exhibit 225. I want you to take a  
13       look at that and tell me if you're familiar  
14       with it.

15           A.    Yes, I've seen this.

16           Q.    Okay. And can you describe for  
17       the jury what this is.

18           A.    This is the Engelhard Corporation  
19       record retention manual dated August of  
20       1984. And it indicates that it's the final  
21       version of it.

22           Q.    Do you know whether documents  
23       related to the Westfall case were destroyed  
24       before this final retention manual was  
25       constructed?

1 MR. FARRELL: Objection to form,  
2 foundation, beyond the scope of the  
3 notice.

4 THE WITNESS: This topic was  
5 covered in your deposition of  
6 Mr. Dornbusch. And his comment was, I  
7 believe, limited to the statement that  
8 documents in the Westfall case were  
9 discarded pursuant to this policy. I  
10 don't know the specifics of when they  
11 were discarded or how they were  
12 discarded.

13 BY MR. PLACITELLA:

14 Q. So you don't know whether they  
15 were discarded when the policy was in draft  
16 or in final; correct?

17 MR. FARRELL: Objection to form  
18 and foundation.

19 THE WITNESS: I know that  
20 Dornbusch said that when it was in  
21 effect. So I would assume it was  
22 final.

23 BY MR. PLACITELLA:

24 Q. Okay. But you don't know?

25 MR. FARRELL: Objection.

1 BY MR. PLACITELLA:

2 Q. You're only going from what  
3 Mr. Dornbusch said?

4 MR. FARRELL: Objection to form,  
5 foundation, beyond the scope of the  
6 notice.

7 THE WITNESS: I go by what he  
8 says because he was there. He was the  
9 primary person.

10 BY MR. PLACITELLA:

11 Q. Okay. So I just have some  
12 questions about this.

13 In the first page, which is Bates  
14 Number 720, it states, under Record  
15 Retention Manual [reading]: Accordingly,  
16 it's the policy of Engelhard Corporation to  
17 retain in its files only those records which  
18 are likely to be needed in our business  
19 operations.

20 Do you see that?

21 A. Yes.

22 MR. FARRELL: Object --  
23 one second.

24 Objection to form, foundation,  
25 beyond the scope of the notice.

1                   Which topic in your notice does  
2                   this relate to? Mr. Placitella, can  
3                   you answer my question.

4       BY MR. PLACITELLA:

5               Q.    Can you answer my question,  
6       Mr. Steinmetz.

7                   MR. FARRELL:   One moment,  
8       Mr. Steinmetz.

9                   MR. PLACITELLA:   I'm not  
10            answering your question today, Peter.  
11            I'm sorry.

12       BY MR. PLACITELLA:

13            Q.    Can you answer my question,  
14       please.

15                   MR. FARRELL:   Mr. Placitella --

16                   MR. PLACITELLA:   I'm not  
17            answering your question today.

18       BY MR. PLACITELLA:

19            Q.    Can you answer my question  
20       please.

21                   MR. FARRELL:   If you're refusing  
22            to answer my questions, that is fine.  
23            Then I will make the statement on the  
24            record that this was a topic that the  
25            plaintiffs designated and then

1           withdrew.

2                   And you are now asking the  
3           witness questions about a topic you  
4           have withdrawn. Your question is  
5           beyond the scope of the notice, and it  
6           is not appropriate. You've been  
7           asking questions beyond the scope of  
8           your notice for much of the morning,  
9           and these questions are not proper.

10                   MR. PLACITELLA: Thank you.

11   BY MR. PLACITELLA:

12           Q. Can you answer my question,  
13   please.

14           A. Yes, that's what it says.

15           Q. Do you know what they mean by  
16   that?

17                   MR. FARRELL: Objection to form,  
18           foundation, beyond the scope of the  
19           notice.

20                   THE WITNESS: I think they mean  
21           that they're going to retain files, in  
22           their files, records that are needed  
23           for business operations.

24   BY MR. PLACITELLA:

25           Q. And what is "needed for business

1 operations"? That's my question.

2 MR. FARRELL: Objection to form,  
3 foundation, beyond the scope of the  
4 notice.

5 THE WITNESS: Again, I didn't  
6 prepare for this. I haven't looked at  
7 this in a long time. I'm not sure --

8 BY MR. PLACITELLA:

9 Q. Okay.

10 A. -- what you mean by "needed for  
11 business operations." To me it would be  
12 those records that are required in order for  
13 them to do business.

14 Q. All right. So can you go to  
15 page 2.

16 See where it gives Index to  
17 Terms?

18 A. Yes.

19 Q. You see where it says "P" is  
20 permanent?

21 A. Yes.

22 Q. Okay. And if you go to page 3,  
23 talks about audit reports.

24 Do you see that?

25 A. Yes.

1 Q. Okay. And that says "permanent";  
2 correct?

3 MR. FARRELL: Objection to form,  
4 foundation, beyond the scope of the  
5 notice.

6 THE WITNESS: It says that, yes.  
7 BY MR. PLACITELLA:

8 Q. So you were asked to provide  
9 today audit reports that the  
10 record-retention policy manual says were  
11 kept permanently. Did you provide them?

12 MR. FARRELL: Objection to form,  
13 foundation, misstates the notice.

14 THE WITNESS: Again, I don't know  
15 that it was in the notice -- what was  
16 in this notice. But I, I'd have to  
17 read this whole, this whole document;  
18 because while it says audit reports  
19 have to be kept permanently, I'm not  
20 sure that would apply to discontinued  
21 businesses.

22 So I'd have to read the whole  
23 thing and see how that might apply to  
24 a discontinued business.

25 BY MR. PLACITELLA:

1 Q. Do you want to skip this and  
2 you'll look at it at lunchtime and come back  
3 to it?

4 A. I'll look at it if I have time at  
5 lunch.

6 Q. Okay. Why don't we do that.

7 MR. FARRELL: We're not going to  
8 review documents in pursuit of  
9 questions that are beyond the scope  
10 your notice.

11 MR. PLACITELLA: Okay. Then  
12 we'll keep going. I'm sorry. I'm  
13 trying to make it easier.

14 MR. FARRELL: We're not going to  
15 keep going on the questions that are  
16 beyond the scope of the notice. We're  
17 going to get the judge on the phone,  
18 and we're going to address the issue.

19 BY MR. PLACITELLA:

20 Q. Okay. Sir, you didn't provide  
21 today in response to my notice anything  
22 having to do with reports made or to or by  
23 auditors; correct?

24 MR. FARRELL: Objection to form  
25 and foundation.

1 THE WITNESS: Would it be okay if

2 I read through the document --

3 BY MR. PLACITELLA:

4 Q. Sure.

5 A. -- and --

6 Q. Absolutely.

7 A. Okay.

8 (Discussion held off the  
9 stenographic record.)

10 THE WITNESS: Okay. Skimmed  
11 through it quickly.

12 BY MR. PLACITELLA:

13 Q. Okay.

14 A. Again, I didn't prepare for this.

15 It wasn't on the list of -- on the notice.

16 So I'll answer to the extent that I can from  
17 reading the document but --

18 Q. Fair enough.

19 A. -- I'm not prepared for it.

20 Q. Here's why I'm asking the  
21 questions. Topic number 6 says that one of  
22 the topics you're supposed to address is the  
23 information provided to the auditors of  
24 Engelhard and BASF AG and all reports issued  
25 by the auditors. Do you see that?

1           A.    Yes, I do see that.

2           Q.    Okay. Now, according to the  
3 document-retention policy, auditors' reports  
4 are something that are kept permanently;  
5 correct?

6           MR. FARRELL: Objection to form,  
7 foundation, beyond the scope of the  
8 notice.

9           THE WITNESS: Again, I -- this  
10 says "permanent." I don't know -- I  
11 haven't reviewed this. I haven't  
12 analyzed it. I've just looked at it  
13 briefly, so I can't really answer the  
14 question.

15 BY MR. PLACITELLA:

16          Q.    I'm just doing it as a  
17 foundation. Did you look at any audit  
18 reports that were kept permanently in  
19 preparation for today's deposition?

20          MR. FARRELL: Objection to form,  
21 foundation.

22          THE WITNESS: No. My  
23 understanding was that one of the  
24 objections, we objected to this one  
25 because we received the notice just a

1 week ago and we just didn't have time  
2 to prepare for it.

3 BY MR. PLACITELLA:

4 Q. Well, did you make a phone call  
5 and see, "Do you have them all in one place?  
6 Can I see them"?

7 MR. FARRELL: Objection.

8 BY MR. PLACITELLA:

9 Q. What efforts did you make to  
10 comply with this?

11 MR. FARRELL: Objection to form,  
12 foundation, argumentative, asked and  
13 answered.

14 THE WITNESS: Again, to my  
15 knowledge, I don't know whether they  
16 exist. I don't know that we've looked  
17 for them. The reason I didn't was  
18 because we only received this a week  
19 ago and I only had a week to prepare  
20 for the issues that were on the  
21 previous one that we received the week  
22 before that. So I didn't do -- we  
23 didn't do anything other than --

24 BY MR. PLACITELLA:

25 Q. Object.

1           A.    -- prepare me to talk about this  
2   on a very high level.

3           Q.    The only thing you did was  
4   object.  You didn't even make a phone call  
5   to see if they were available; correct?

6           MR. FARRELL:  Objection to form,  
7           foundation, argumentative.

8   BY MR. PLACITELLA:

9           Q.    You have no idea how easy it  
10   would be or not to produce these documents;  
11   correct?

12          MR. FARRELL:  Objection to form,  
13          foundation, argumentative.

14          THE WITNESS:  To answer your  
15          question, I did not make a phone call.  
16          And I don't know hard it would be to  
17          obtain these.

18          Q.    Okay.  Can you go to page 7.

19          MR. FARRELL:  Page 7 of what?

20          MR. PLACITELLA:  The same  
21          document-retention policy.

22   BY MR. PLACITELLA:

23          Q.    That lists board minutes;  
24   correct?

25          A.    Yes.

1 Q. And that says they're to be kept  
2 permanently; correct?

3 MR. FARRELL: Objection to form,  
4 foundation, beyond the scope of the  
5 notice.

6 THE WITNESS: Yes, it says that.  
7 BY MR. PLACITELLA:

8 Q. And the notice here says  
9 [reading]: The information provided to the  
10 Engelhard and BASF board of directors  
11 concerning the evidence of asbestos in Emtal  
12 talc and the risks posed.

13 Do you see that, number 7?

14 A. Yes, I do.

15 Q. Now, you have actually  
16 testified -- you have actually certified  
17 answers to interrogatories about what was in  
18 board minutes; correct?

19 MR. FARRELL: Objection to form,  
20 foundation, beyond the scope of the  
21 notice.

22 THE WITNESS: Could I look at the  
23 interrogatories and I'll answer that.

24 BY MR. PLACITELLA:

25 Q. Can you recall that?

1           A.    I'd have to look at the  
2   interrogatory.

3           Q.    Do you have Exhibit 63 in front  
4   of you?

5           A.    Yes.

6           Q.    Okay. And can you look at  
7   interrogatory number 15.

8           A.    Yes.

9           Q.    And that asks for information  
10   concerning reports to the board of  
11   directors?

12                   MR. FARRELL: Objection to form.

13                   THE WITNESS: It requests whether  
14   the board of directors were ever given  
15   reports on Emtal claims.

16   BY MR. PLACITELLA:

17           Q.    And these were certified by you,  
18   correct --

19                   MR. FARRELL: Objection to  
20   form --

21   BY MR. PLACITELLA:

22           Q.    -- these interrogatories?

23                   MR. FARRELL: Objection to form  
24   and foundation.

25                   THE WITNESS: Yes, I did certify

1           these.

2       BY MR. PLACITELLA:

3           Q.    Okay.  And you say that -- and  
4       you talk about what BASF was provided.

5           A.    And -- yes.  And then I also say  
6       at the end that these were likely protected  
7       by client/attorney privilege.

8           Q.    Okay.  Well, did you ever look at  
9       a board of directors meeting to see if there  
10      was any facts in there that weren't  
11      protected?

12          A.    If it's privileged, I can't look  
13      at it.

14          Q.    Did you ever look at -- how did  
15      you answer these interrogatories without  
16      looking at a board of directors minutes?

17                  MR. FARRELL:  Objection to form,  
18                  foundation, beyond the scope of the  
19                  notice.

20       BY MR. PLACITELLA:

21          Q.    Well, you have an, you have an  
22      answer.  How did you answer this without  
23      looking at anything?

24                  MR. FARRELL:  Objection to form,  
25                  foundation, beyond the scope of the

1 notice.

2 THE WITNESS: As is usually the  
3 case, counsel prepared this; and I  
4 read it and reviewed it. And if I had  
5 questions, I asked them about it.

6 BY MR. PLACITELLA:

7 Q. So these aren't your answers?  
8 They're your lawyer's answers?

9 MR. FARRELL: Objection to form,  
10 foundation, beyond the scope of the  
11 notice argumentative.

12 BY MR. PLACITELLA:

13 Q. Well, did you certify that these  
14 information was true and accurate to the  
15 best of your knowledge?

16 MR. FARRELL: Objection --

17 BY MR. PLACITELLA:

18 Q. Under oath did you do that?

19 MR. FARRELL: Objection to form  
20 and foundation, misstates  
21 Mr. Steinmetz's verification.

22 THE WITNESS: I'm sorry. Could  
23 you repeat the question.

24 BY MR. PLACITELLA:

25 Q. Did you certify these

1 interrogatories to be true and accurate to  
2 your best of your knowledge?

3 A. Yes.

4 Q. But you did nothing to verify  
5 whether this statement about what was given  
6 to the board of directors was correct or  
7 not; correct?

8 MR. FARRELL: Objection to form,  
9 foundation, beyond the scope of the  
10 notice, misstates Mr. Steinmetz's  
11 testimony.

12 THE WITNESS: Could you repeat  
13 it.

14 BY MR. PLACITELLA:

15 Q. You did nothing to verify whether  
16 the information concerning what was provided  
17 to the board of directors in the  
18 interrogatories you signed was true or not?

19 MR. FARRELL: Same objections,  
20 asked and answered, beyond the scope  
21 of the notice.

22 THE WITNESS: I'm sorry. So  
23 you're asking whether I -- I'm --  
24 could you repeat it one more time.

25 BY MR. PLACITELLA:

1 Q. You did nothing to verify what  
2 you were answering was true or not. You  
3 simply took the word of your lawyers and  
4 then signed the verification; right?

5 MR. FARRELL: Objection to form,  
6 foundation, beyond the scope of the  
7 notice, misstates Mr. Steinmetz's  
8 testimony.

9 THE WITNESS: In this specific  
10 question I didn't ask them any  
11 questions about it. I didn't verify  
12 it specifically with them. But I'm  
13 very confident in, in the responses  
14 that they provide, and I'm very  
15 confident that this is accurate.

16 BY MR. PLACITELLA:

17 Q. Remember when we started this dep  
18 and I said that the information that is  
19 provided from discovery comes from the  
20 client? That's you, correct --

21 MR. FARRELL: Objection --

22 BY MR. PLACITELLA:

23 Q. -- not the lawyers.

24 MR. FARRELL: Objection to form,  
25 argumentative.

1 BY MR. PLACITELLA:

2 Q. Right?

3 A. Yes. But as I also mentioned,  
4 the client depends on the, on the law firm  
5 representing it to put together information,  
6 prepare it, and, and trust that it's  
7 correct.

8 Q. But the basic information has to  
9 come from you, BASF; correct?

10 MR. FARRELL: Objection to form,  
11 beyond the scope of the notice,  
12 argumentative.

13 THE WITNESS: Again, the basic  
14 information would have come from BASF  
15 files, from Engelhard files that were  
16 searched by our counsel.

17 BY MR. PLACITELLA:

18 Q. Fine, so now go back to the -- my  
19 question: You were asked to come prepared  
20 to talk about information that was provided  
21 to the board of directors; correct?

22 MR. FARRELL: Objection to form.

23 THE WITNESS: I'm sorry. And  
24 this is issue number...?

25 BY MR. PLACITELLA:

1 Q. 7.

2 A. 7.

3 Q. Very similar to the interrogatory  
4 that you certified; true?

5 MR. FARRELL: Objection to form,  
6 foundation, misstates the  
7 interrogatory and misstates the  
8 designated issue.

9 THE WITNESS: So as we mentioned  
10 in our objection to the interrogatory,  
11 it does seek information that's  
12 attorney/client privileged and I  
13 wouldn't be able to see it, so there  
14 would be little that I could talk  
15 about in this area.

16 BY MR. PLACITELLA:

17 Q. What was my question, sir?

18 MR. FARRELL: Objection,  
19 argumentative.

20 THE WITNESS: I'm not sure.  
21 Could you repeat it.

22 BY MR. PLACITELLA:

23 Q. Do you have any idea what my  
24 question was, sir?

25 MR. FARRELL: Objection,

1 argumentative.

2 Mr. Steinmetz, you don't need to  
3 respond further.

4 Do you have a question for the  
5 witness, Mr. Placitella, that's not --

6 BY MR. PLACITELLA:

7 Q. Do you have any idea what my  
8 question was, sir?

9 MR. FARRELL: You don't need to  
10 respond to that, Mr. Steinmetz.

11 MR. PLACITELLA: Are you  
12 directing him not to answer?

13 MR. FARRELL: I'm directing  
14 him --

15 MR. PLACITELLA: Are you  
16 directing him not to answer the  
17 question?

18 MR. FARRELL: I'm directing him  
19 not to answer --

20 MR. PLACITELLA: Okay.

21 MR. FARRELL: -- your  
22 argumentative question.

23 MR. PLACITELLA: Okay.

24 BY MR. PLACITELLA:

25 Q. Sir, you answered interrogatories

1 about information that was provided to the  
2 board of directors; correct?

3 MR. FARRELL: Objection to form,  
4 foundation, misstates the  
5 interrogatory, misstates the  
6 interrogatory response, beyond the  
7 scope of the notice, asked and  
8 answered, harassing the witness.

9 BY MR. PLACITELLA:

10 Q. Sir?

11 A. I can read what the response was  
12 if you want me to.

13 Q. You answered interrogatories  
14 about information that was provided to the  
15 board of directors; true?

16 MR. FARRELL: Same objections.

17 BY MR. PLACITELLA:

18 Q. It's still up on the screen.

19 A. I answered a question that stated  
20 the board of directors received general  
21 litigation updates from Cahill attorneys  
22 and/or from Arthur Dornbusch from time to  
23 time.

24 Q. Okay. And then you were asked  
25 here to be -- to respond to similar

1 questions in preparation for today's  
2 deposition; correct?

3 MR. FARRELL: Objection to form,  
4 foundation, misstates the notice.

5 THE WITNESS: Unfortunately, I  
6 can't respond to questions because of  
7 privilege and I don't know the  
8 information.

9 BY MR. PLACITELLA:

10 Q. Well, did you look at a single  
11 board of directors minute that have been  
12 kept permanently in order to respond to  
13 today's deposition?

14 MR. FARRELL: Objection to form,  
15 foundation, assumes facts, beyond the  
16 scope of the notice, asked and  
17 answered.

18 BY MR. PLACITELLA:

19 Q. Sir, the truth of the matter is,  
20 even though you swore under oath about  
21 information that was provided to the board  
22 of directors in answers to interrogatories  
23 in this case and you were noticed on this  
24 topic, you did nothing to prepare yourself  
25 for that topic; true?

1 MR. FARRELL: Objection to form,  
2 foundation.

3 You're now arguing with the  
4 witness. You're harassing the  
5 witness. You've asked these questions  
6 multiple times. It's beyond the scope  
7 of the notice.

8 BY MR. PLACITELLA:

9 Q. Sir --

10 MR. FARRELL: There are --

11 BY MR. PLACITELLA:

12 Q. Please answer my question.

13 MR. FARRELL: Excuse me. I  
14 wasn't finished.

15 MR. PLACITELLA: Are you taking  
16 down all this time, all his  
17 objections?

18 Thank you.

19 MR. FARRELL: The time that I'm  
20 spending right now is because of your  
21 improper questions, your harassing of  
22 the witness, your persistence in  
23 asking questions that are beyond the  
24 scope of the notice, your deliberate  
25 disregard for the objections that have

1           been asserted in response to the  
2           notice, and the fact that the witness  
3           has now responded to your question  
4           multiple times.

5                       So the reason that I need to take  
6           up time to object to these questions  
7           is because you persist in asking the  
8           same improper question over and over  
9           and over again, despite getting the  
10          same answer from the witness.

11                      Your question is improper; my  
12          objections are not.

13                      MR. PLACITELLA: Can you read my  
14          question back, please.

15                      (The court reporter read back as  
16          follows:

17                                "Q Sir, the truth of the  
18                      matter is, even though you've sworn  
19                      under oath about information that  
20                      was provided to the board of  
21                      directors in answers to  
22                      interrogatories in this case and you  
23                      were noticed on this topic, you did  
24                      nothing to prepare yourself for that  
25                      topic; true?")

1 MR. FARRELL: Same objections.

2 THE WITNESS: So my answer is I'm  
3 completely comfortable with the answer  
4 and the fact that I verified this  
5 response. It came from counsel. I  
6 very much trust counsel. I know that  
7 they reviewed the documents necessary  
8 to answer this question. I didn't see  
9 any need to take it any further  
10 because it's a very basic high-level  
11 question.

12 Regarding preparation for today,  
13 looking at this designated issue,  
14 number 7, again I'll go back to the  
15 fact that we just received this  
16 document a week ago. There was a lot  
17 of information to review, a lot of  
18 information to look at. You have to  
19 prioritize your time when you're  
20 getting ready for something like this.

21 I wanted to be able to answer as  
22 many questions as possible. The  
23 problem in this case is that it was  
24 given to us at the last minute, so I  
25 didn't prioritize it myself as being

1           one of the most important things to  
2           look at. And further, I've been  
3           informed by my counsel that most of  
4           the information is probably privileged  
5           and I wouldn't be able to look at it  
6           or respond to it.

7 BY MR. PLACITELLA:

8           Q. Respectfully, sir, move to strike  
9           your answer. So let me ask the question  
10          again.

11                   Did you do anything to prepare  
12          yourself to answer area number 6 in your  
13          deposition notice, yes or no?

14                   MR. FARRELL: The same objections  
15          I've stated. You're harassing the  
16          witness. It's been asked and answered  
17          multiple times.

18                   THE WITNESS: Yes.

19 BY MR. PLACITELLA:

20           Q. And what did you do?

21           A. I reviewed it with counsel.

22           Q. So the only thing you did to  
23          prepare to answer this question is to go  
24          over the topic with counsel?

25                   MR. FARRELL: Objection to form,

1 foundation, asked and answered.

2 You're harassing the witness.

3 THE WITNESS: I'm not sure what  
4 you mean by "go over." I reviewed the  
5 topic with counsel, and I reviewed the  
6 objections that we filed.

7 BY MR. PLACITELLA:

8 Q. Did you conduct any investigation  
9 in order to respond to topic number 6 in the  
10 deposition notice to prepare for today's  
11 deposition, any investigation whatsoever?

12 MR. FARRELL: We're done. We're  
13 going to call the Judge.

14 MR. PLACITELLA: Okay.

15 BY MR. PLACITELLA:

16 Q. Can you answer my question?

17 MR. FARRELL: I'm sorry, sir. I  
18 have said we're calling the Judge.

19 MR. PLACITELLA: Call the Judge.

20 THE VIDEOGRAPHER: The time is  
21 now 12:33 p.m. We're going off the  
22 record.

23 (The witness left the room.)

24 (A call was placed.)

25 MR. FARRELL: So, Your Honor,

1           you're now on --

2           THE COURT: Are we on the record  
3           also?

4           MR. FARRELL: We are on the  
5           record. The court reporter is here.  
6           I think we're off the video record.  
7           The witness has left the room. We are  
8           now approximately two and a half hours  
9           into the deposition.

10          I'm here. Mr. Placitella's here  
11          for the plaintiffs. And Mr. Boise is  
12          here for Cahill. And then the other  
13          parties are dialed in by telephone.

14          THE COURT: Okay.

15          MR. FARRELL: We've been going  
16          approximately two and a half hours.  
17          I'd say more than half the time so far  
18          has been dedicated to questions that  
19          are beyond the scope of the notice.

20          We started out with a number of  
21          questions regarding what BASF viewed  
22          its obligations under the 7th  
23          Amendment to the Constitution to be.  
24          We've now gone through all sorts of  
25          irrelevant and beyond-the-scope

1 subject matter.

2 And we're now on to harassing  
3 questions from plaintiff's counsel  
4 concerning the efforts that BASF took  
5 to prepare for the notice.

6 The particular topic that's at  
7 issue was a new topic that was  
8 designated for the first time a week  
9 ago concerning updates that  
10 Mr. Dornbusch or counsel for the  
11 company gave to BASF's and Engelhard's  
12 board of directors concerning the  
13 risks of Emtal litigation.

14 Given that the topic was  
15 designated after the discovery cutoff,  
16 a week before the deposition, and that  
17 it expressly calls for information  
18 protected by the attorney-client  
19 privilege, we objected to the topic on  
20 timeliness, on privilege grounds, and  
21 other grounds.

22 Our witness has now been here for  
23 the last 20 minutes being harassed by  
24 plaintiffs' counsel about why he  
25 didn't take additional steps to

1 prepare to respond to a topic that  
2 wasn't timely served and calls for  
3 privileged information.

4 The witness has answered at this  
5 point, I would say, ten questions  
6 about what he did to respond, why he  
7 wasn't able to look into the matter  
8 more fully, including because it  
9 called for privileged information.  
10 And plaintiff's counsel are persisting  
11 in harassing the witness with repeated  
12 questions that have been answered  
13 multiple times about the witness'  
14 preparation and his response to these  
15 questions.

16 So in light of all of that, after  
17 allowing the witness to answer the  
18 questions numerous times, reminding  
19 plaintiffs' counsel that we had  
20 objected to the topic and that the  
21 witness had already asked and answered  
22 the question multiple times and was  
23 being harassed, I excused the witness  
24 from the room and I called Your Honor  
25 so that Your Honor can put a stop to

1 this.

2 THE VIDEOGRAPHER: Who is the  
3 witness?

4 MR. FARRELL: His name is Daniel  
5 Steinmetz. He is the corporate  
6 representative of BASF Catalyst.

7 THE COURT: And why does that  
8 name sort of ring a bell with me?

9 MR. FARRELL: Because he was also  
10 the corporate representative for BASF  
11 in the Sampson case and provided three  
12 days of testimony to plaintiff's  
13 counsel in Sampson, which, as Your  
14 Honor knows, is also the Cohen  
15 Placitella firm. So I think you've  
16 seen his transcripts in the briefing  
17 in our case.

18 THE COURT: That's why. Thank  
19 you.

20 Before we hear from  
21 Mr. Placitella, remind me,  
22 Mr. Farrell, if you would, there is a  
23 time limitation on this deposition, is  
24 there not?

25 MR. FARRELL: Yes; seven hours,

1 Your Honor.

2 THE COURT: Okay. Why did I  
3 think it was less than that?

4 MR. PLACITELLA: It's not.

5 THE COURT: I thought we had gone  
6 through this discussion before.

7 MR. PLACITELLA: No.

8 THE COURT: I could be wrong.  
9 I've been wrong before. But if it's,  
10 if it's a full seven-hour one, then  
11 that's fine.

12 I assume you agree with that,  
13 Mr. Placitella?

14 MR. PLACITELLA: My understanding  
15 is it's seven hours, and that's the --  
16 what we're operating under; yes.

17 THE COURT: Okay. Okay. Well,  
18 Mr. Placitella, why are you engaging  
19 in all of these dastardly deeds?

20 MR. PLACITELLA: Well, Your  
21 Honor, I will leave the transcript for  
22 you to draw your own judgments. I  
23 won't characterize the objections.

24 I will say I'm keeping track of  
25 the time spent on objections, and a

1 significant portion of that has been  
2 taken up by objections.

3 This man was asked to speak to  
4 this topic. He signed an  
5 interrogatory -- he swore under oath  
6 an interrogatory response related to  
7 the topic in this case.

8 And the response from counsel to  
9 the topic was, after they said we  
10 don't have enough time and how bad we  
11 are, they, said [reading]: Subject to  
12 and without waiving our objections,  
13 BASF will produce a representative to  
14 testify regarding this topic, to the  
15 extent that it is possible given the  
16 untimely nature.

17 THE COURT: Okay.

18 MR. PLACITELLA: I asked the  
19 client, Mr. Steinmetz, what he did to  
20 prepare himself. And the answer is he  
21 did nothing, zero. He didn't make a  
22 phone call; he didn't look at a single  
23 document. The only thing he did was  
24 discuss the topic with counsel.

25 Now, if there was an issue

1 under -- and they didn't think they  
2 had enough time, they could come back;  
3 they could have asked for more time;  
4 they could have filed a proper motion.

5 But I just decided we'll just let  
6 it go and let everybody do the best  
7 job they can. They said the man would  
8 be prepared to the -- to answer the  
9 question given the timeframe. I was  
10 willing to live with that.

11 But the truth of the matter is,  
12 if you read the record, he did  
13 absolutely nothing to prepare himself  
14 for this topic, as I'm sure is going  
15 to be proven on other topics.

16 So all I asked him was in the  
17 last -- we can find it and read it  
18 back -- was: Am I correct that you  
19 did absolutely nothing to prepare  
20 yourself to answer this question?

21 And then I would bring it to Your  
22 Honor to make a ruling subsequent.

23 That was the question on which  
24 Mr. Farrell would not let him answer  
25 the question.

1 MR. FARRELL: Your Honor, if I  
2 could respond.

3 That question was asked in  
4 different formulations a half dozen  
5 times or more. I let the witness  
6 answer it the first five-plus times.  
7 It was when we got to instance six or  
8 eight or whatever we're up to when I  
9 called the Court.

10 Let me also say that BASF's  
11 interrogatory responses are not a  
12 topic for the deposition. The  
13 interrogatory that Mr. Placitella's  
14 referring to simply asks: Was your  
15 board of directors ever given reports  
16 on Emtal claims?

17 The response that BASF gave and  
18 that Mr. Steinmetz verified said:  
19 Yes, from time to time Mr. Dornbusch  
20 gave updates to the board of  
21 directors.

22 As Your Honor might imagine, BASF  
23 is asserting privilege over the  
24 substance of what those updates might  
25 have been. We're talking about --

1 THE COURT: Well, if they were  
2 updates from Mr. Dornbusch, then  
3 clearly those are privileged.

4 MR. FARRELL: Exactly, Your  
5 Honor. And we said --

6 THE COURT: So --

7 MR. FARRELL: Exactly, Your  
8 Honor. And we said as much --

9 THE COURT: I don't think  
10 Mr. Placitella has much argument with  
11 that.

12 Do you, Mr. Placitella?

13 MR. PLACITELLA: No. I was  
14 laying a foundation for how often --  
15 that I wanted to ask general  
16 questions, not specific  
17 communications. And I have been  
18 precluded from doing that. They have  
19 thwarted --

20 THE COURT: But help me  
21 understand what I need to know, which  
22 is: If you're talking about the topic  
23 of Mr. Dornbusch's reports to the  
24 board of directors on ongoing  
25 litigation, you do agree with me that

1           that would be privileged?

2           MR. PLACITELLA: That would be  
3 privileged. Information, however --

4           THE COURT: Okay.

5           MR. PLACITELLA: Yes. But my  
6 questions are information provided to  
7 the board of directors, not by  
8 Mr. Dornbusch.

9           Mr. Dornbusch is how they  
10 answered the question in the answers  
11 to interrogatories. I was asking a  
12 very basic question. I wanted to see  
13 the board of director minutes. Their  
14 document-retention policies say that  
15 they were kept permanently.

16           And I asked them to produce the  
17 minutes. They refused to produce the  
18 minutes. I was laying a foundation.  
19 They did nothing. They did absolutely  
20 nothing.

21           THE COURT: Take -- work with me  
22 here; because, remember, you're asking  
23 me to parachute into the middle of  
24 this without a whole lot of the  
25 history.

1           You made a request for the board  
2           of directors minutes. And they were  
3           not produced, either in a redacted or  
4           unredacted form?

5           MR. PLACITELLA: I will pull them  
6           out right here. Hold on.

7           THE COURT: Well, if you can pull  
8           them out --

9           MR. PLACITELLA: No, no. I'm  
10          looking for the request so we have it.  
11          So I don't want to speak...

12          THE COURT: Well, Mr. Farrell,  
13          was a request made and was the request  
14          complied with, at least in part?

15          MR. FARRELL: I do not --

16          MR. PLACITELLA: I'm looking at  
17          it, Judge, and I don't see the minutes  
18          specifically here. Just give me a  
19          second.

20          MR. FARRELL: That is what I was  
21          going to say, Your Honor, is there is  
22          no request for the production of board  
23          minutes attached to the notice, to my  
24          knowledge. If I'm mistaken about  
25          that, then I am.

1           What we were really -- the reason  
2           we called Your Honor -- and I don't  
3           want us to get sidetracked -- is what  
4           I perceived to be the harassing  
5           questions from Mr. Placitella  
6           repeatedly asking the witness over and  
7           over again why he supposedly did  
8           nothing to prepare for a topic.

9           That question has been answered  
10          multiple times. And the reason that  
11          the witness did not prepare in certain  
12          ways was already explained, including  
13          the fact that the information sought  
14          is privileged.

15          BASF explained in its responses  
16          to the deposition notice that it would  
17          not be preparing its witness on  
18          privileged information because we  
19          would not be waiving the  
20          attorney/client privilege.

21          So what the witness has indicated  
22          is that he did review the topic; he  
23          met with counsel to prepare.

24          I'll tell Your Honor the witness  
25          has spent five or more full days

1 preparing for this deposition. So the  
2 suggestion that he's inadequately  
3 prepared or hasn't made a good-faith  
4 effort to prepare for this deposition  
5 is groundless.

6 The issue is the topic that is  
7 calling for privileged --

8 THE COURT: Well, let's, let's,  
9 let's do this by the numbers, because  
10 it seems to me that we need to address  
11 what needs to be addressed in order  
12 for this deposition to be concluded.

13 Now, if Mr. Placitella has asked  
14 "Why didn't you prepare on X subject?"  
15 and a response has been given, then it  
16 is inappropriate to ask that same  
17 question over and over again.

18 This is a deposition. So the  
19 proper objection would be an objection  
20 to the form of the question; the  
21 objection, substantive objection  
22 behind that being that this question  
23 was asked and answered.

24 So I assume that you're making an  
25 objection to the form of the question

1           when that question is being asked for  
2           more than the first time. And if  
3           you're kind enough to let it be asked  
4           three or four times before you object  
5           to it, that's perfectly fine. I think  
6           that's probably the better route for  
7           lawyers to follow.

8                     But it is inappropriate to ask  
9           the same question over and over again,  
10          especially when you've already gotten  
11          answers. And what I would suggest to  
12          you is that the easy thing to do is  
13          to -- if this is going to be a problem  
14          on a going-forward basis today, is,  
15          Mr. Farrell, when you make your  
16          objection, your objection should be to  
17          the form of the question; but you  
18          should add "it's been asked and  
19          answered."

20                    Because then I'm going to assume  
21          you will move to strike any responses  
22          that are subject to those objections,  
23          and it'll make it a lot easier for me  
24          to be able to make those  
25          determinations.

1                   But at the same time,  
2           Mr. Placitella, I would urge you to  
3           please not ask the same question over  
4           and over again; because if you do,  
5           you're wasting time. And if it  
6           becomes something that is as endemic  
7           as Mr. Farrell seems to be explaining,  
8           it may also be grounds for sanctions  
9           that I don't think we want to go near  
10          at this stage of the game.

11                  So you're both very good, very  
12          experienced lawyers. I am very  
13          confident you'll be able to work that  
14          out.

15                  MR. FARRELL: Understood, your  
16          Honor. We appreciate the time.

17                  THE COURT: Okay. But just --  
18          you know, if it's an  
19          asked-and-answered issue, just after  
20          you say "objection to the form," add  
21          in it's because it's been asked and  
22          answered. And that's going to make it  
23          easier on review if that ever becomes  
24          necessary to look at it and say, Okay,  
25          I can track the asked-and-answered

1           here; and, you know what, asking the  
2           question three times is two times too  
3           many. So --

4                   MR. FARRELL: Thank you, Your  
5           Honor.

6                   MR. PLACITELLA: Well, Judge, I  
7           would just say this: I don't agree  
8           with the characterization of anything  
9           that Mr. Farrell has said. If the  
10          witness -- half the time I ask the  
11          witness questions, he has no idea even  
12          what I asked him because he's all  
13          wound up about what he's going to say.  
14          And the record will speak for itself.

15                   THE COURT: Okay. Well, that's  
16          fine. I don't have a problem with  
17          that. But I'm addressing what  
18          Mr. Farrell is raising, which is his  
19          concern that the witness is being  
20          asked the same question over and over  
21          again and that that has to end at some  
22          point.

23                   And the way for me to -- if  
24          that's the problem, whether anybody  
25          agrees with that characterization or

1 not, if that's the problem, I just  
2 gave you a cure to the problem --

3 MR. PLACITELLA: And that's fine.  
4 I'm happy to --

5 THE COURT: -- and the deposition  
6 can go forward; right?

7 MR. PLACITELLA: I'm happy to do  
8 that. And if he doesn't answer the  
9 question and you determine that he did  
10 not answer the question and it wasn't  
11 asked and answered, then we'll make a  
12 motion for sanctions to bring him  
13 back.

14 THE COURT: And, believe me, it  
15 will be well-received; because what's  
16 sauce for the goose is sauce for the  
17 gander.

18 MR. PLACITELLA: Fine by me.

19 MR. FARRELL: I appreciate that,  
20 Your Honor. I have been noting along  
21 the way "asked and answered" as the  
22 basis for form objections, and I will  
23 continue to do so as Your Honor has  
24 advised.

25 THE COURT: Just make it easier

1           for me -- I mean, this is purely  
2           selfish. It'll make it easier for me  
3           to be able to track that if motion  
4           practice results from this deposition,  
5           which it sounds like it might, but I  
6           kind of hope that it will not.

7                     MR. PLACITELLA: We're guided  
8           accordingly.

9                     THE COURT: Is that the sum and  
10          substance of the reason for this phone  
11          call?

12                    MR. FARRELL: It is, Your Honor.  
13          We've had similar issues on questions  
14          that I've perceived to be beyond the  
15          scope. But I think we'll take the  
16          guidance Your Honor had given on  
17          making objections and motions after  
18          the fact, and we'll apply it to those  
19          issues as well.

20                    THE COURT: Yeah. The only thing  
21          that is easier is that, you know, even  
22          though technically all you have to say  
23          is "objection to the form," if you  
24          make it a slightly more speaking  
25          objection -- and I don't mean go on a

1           30-minute diatribe -- but, you know,  
2           "objection to the form, beyond the  
3           scope," that's all you need to do.

4           There's now a Third Circuit judge  
5           who, when he was a US District Court  
6           judge; at trial he would only allow  
7           you to -- you stand up; you say  
8           "objection"; and then you had to then  
9           cite the rule that you were objecting  
10          on the basis of.

11          MR. FARRELL: Yes.

12          THE COURT: And that's it. No  
13          more words. "Objection; rule blank."  
14          That's all he did.

15          And believe me, that was very  
16          helpful to both the Court as well as  
17          to the lawyers. It made them really  
18          think about what it was they were  
19          objecting about and whether there was  
20          a proper basis for it.

21          And I'm just suggesting we apply  
22          a modification of that in these  
23          circumstances because I think it will  
24          be easier for everyone.

25          MR. PLACITELLA: That's fine,

1 Your Honor.

2 MR. FARRELL: Understood, Your  
3 Honor.

4 I think a lot of this we can, we  
5 can work through ourselves. I've been  
6 asking Mr. Placitella along the way to  
7 tell me which topic --

8 MR. PLACITELLA: I'm not going to  
9 do that.

10 MR. FARRELL: -- he believes the  
11 question relates to, and he's refused  
12 to answer my questions.

13 So I was waiting to hear "Oh,  
14 this relates to topic 3"; and then I  
15 would have said "Okay." But every  
16 time I have asked, he has refused to  
17 respond. So that is why I'm making  
18 these beyond-the-scope objections.

19 THE COURT: Well, Mr. Placitella  
20 is a very good and very experienced  
21 lawyer. And he understands that if he  
22 is given the opportunity to help you  
23 further refine your objection or  
24 determine whether the objection even  
25 is necessary and he doesn't take

1 advantage of it, he'll be in a bad --  
2 in a worse position later on.

3 So I don't think -- I think  
4 that's a judgment that Mr. Placitella  
5 has to make for himself; and I'm, you  
6 know, a million percent confident that  
7 he will do so in the best interest of  
8 his client. So, you know, we'll -- if  
9 we have to litigate the issue  
10 afterwards, we will. I hope we don't;  
11 but if we do, we will.

12 Now, the other thing I want to  
13 suggest to people is just because the  
14 rule allows for a deposition to be  
15 seven hours in one day doesn't mean  
16 that a deposition has to go for seven  
17 hours in one day. And that's to both  
18 sides. You know, let's, let's be a  
19 little bit more sparse in how we go  
20 about asking the questions also, a  
21 little more sparse in how we go about  
22 objecting to questions.

23 Let's try to do this to get  
24 information that is needed in order to  
25 move the case along. I will say to

1           you folks what I've said before, which  
2           is: You may not get what you want,  
3           but you're going to get what you need.  
4           Use the need as your standard. Okay?

5           MR. FARRELL: We appreciate the  
6           guidance, and we appreciate the time,  
7           Your Honor. Thank you very much.

8           THE COURT: It's my pleasure.  
9           That's what I'm here for. Is there  
10          anything else I can help you on today?

11          MR. FARRELL: Not at this point.

12          THE COURT: Mr. Placitella?

13          MR. PLACITELLA: I'm fine, Your  
14          Honor. Thank you for your time.

15          THE COURT: Well, I know you're  
16          always fine. I expect nothing less  
17          from you. But I'm happy to help  
18          wherever I can. And, of course, I'm  
19          assuming a fact not in evidence, and  
20          that is I'm actually being of some  
21          help under the circumstances.

22          But, you know, I should be here  
23          the remainder of the day. If  
24          something else comes up, please call  
25          me. But as much as I like talking to

1           you guys, I hope you don't. Okay?

2           MR. FARRELL: Understood.

3           MR. PLACITELLA: Thank you, Your  
4 Honor.

5           MR. FARRELL: Thank you very  
6 much.

7           THE COURT: Take care now.  
8 Bye-bye.

9           MR. PLACITELLA: Is this a good  
10 time? Do you want to break?

11          MR. FARRELL: Yeah, I do.

12          (Discussion held off the record.)

13          (Luncheon recess.)

14          THE VIDEOGRAPHER: The time is  
15 now 1:50 p.m. We are back on the  
16 record.

17 BY MR. PLACITELLA:

18          Q. Okay. So finishing designated  
19 issue number 7, the information provided to  
20 Engelhard and BASF boards of directors  
21 concerning the evidence of asbestos in Emtal  
22 talc and risks posed to corporation related  
23 to lawsuits alleging injury from asbestos to  
24 Emtal talc. You with me?

25          A. I'm sorry. I have to find it.

1 Q. Sure.

2 MR. FARRELL: What are you  
3 looking for?

4 MR. PLACITELLA: The notice.

5 THE WITNESS: The notice that you  
6 put into --

7 MR. FARRELL: Oh, the objections?

8 THE WITNESS: The objections.

9 BY MR. PLACITELLA:

10 Q. Do you have the regular notice in  
11 front of you?

12 MR. FARRELL: Here's my copy of  
13 objections. I don't know where the  
14 marked one is.

15 THE WITNESS: Yeah, it was here  
16 and it's not.

17 BY MR. PLACITELLA:

18 Q. I think it's the page 10.

19 A. Okay. I'm --

20 Q. You with me?

21 A. -- on designated issue 7.

22 Q. Yes.

23 A. Okay.

24 Q. Do you know whether any Engelhard  
25 or BASF scientists ever provided information

1 to the board of directors related to this  
2 topic?

3 MR. FARRELL: Objection to form.

4 THE WITNESS: Again, this is  
5 another one where there were privilege  
6 issues. I didn't prepare for this  
7 one. This one, I believe, was one of  
8 the later issues designated. My  
9 understanding is that -- I have to  
10 find this one.

11 My understanding is that there  
12 was information provided. I think  
13 Mr. Dornbusch testified to that fact  
14 also.

15 BY MR. PLACITELLA:

16 Q. Okay. Maybe you didn't hear my  
17 question. Do you know whether information  
18 was ever provided to the board of directors  
19 related to this topic by Engelhard  
20 scientists, not lawyers?

21 MR. FARRELL: Objection to form.

22 THE WITNESS: Not that I know of.

23 BY MR. PLACITELLA:

24 Q. Okay. What's the basis for that  
25 statement?

1 MR. FARRELL: Objection to form.

2 THE WITNESS: I don't know.

3 BY MR. PLACITELLA:

4 Q. You don't know whether it  
5 happened one way or the other?

6 A. Yes. The basis is I just don't  
7 know.

8 Q. Okay. Did you ever try to find  
9 out?

10 A. Just through the normal course of  
11 preparation and discussing these on a high  
12 level with counsel. I didn't do anything  
13 else.

14 Q. Okay. Do you know whether any,  
15 any risk managers who worked for Engelhard  
16 made it -- ever made any presentations or  
17 provided any information to the board of  
18 directors related to topic number 7?

19 MR. FARRELL: Objection to form,  
20 foundation.

21 THE WITNESS: I know that you  
22 took Pagonis' deposition. He may have  
23 spoken to that. I read parts of the  
24 deposition; and I, I don't know  
25 whether he addressed that directly.

1           So I would refer to the deposition,  
2           but I don't know right now.

3       BY MR. PLACITELLA:

4           Q.    So as you sit here today you  
5       didn't make any independent evaluation as to  
6       whether -- well, I'll ask a summary  
7       question.

8                   Do you know whether any  
9       executives other than lawyers ever made any  
10      presentations to the board of directors or  
11      ever provided information to the board of  
12      directors concerning topic number 7?

13                   MR. FARRELL:  Objection to form  
14      and foundation.

15                   THE WITNESS:  I don't know that.

16      BY MR. PLACITELLA:

17           Q.    Okay.  And did you ever review  
18      any board minutes whatsoever to see whether  
19      the topic of Emtal talc was ever even  
20      mentioned?

21                   MR. FARRELL:  Objection to form  
22      and foundation.

23                   THE WITNESS:  Within the last  
24      week I haven't reviewed any.  I may  
25      have seen some in the past.  I, I

1 don't recall.

2 BY MR. PLACITELLA:

3 Q. So in preparation for today's  
4 deposition, you never reviewed any board of  
5 directors minutes; fair?

6 MR. FARRELL: Objection to form,  
7 foundation.

8 THE WITNESS: I did not.

9 BY MR. PLACITELLA:

10 Q. Okay. So as we sit here today,  
11 in preparation for today's deposition, you  
12 didn't conduct any investigation to  
13 determine what information was communicated  
14 to the board of directors concerning the  
15 testing of Emtal talc or the litigation of  
16 Emtal talc by anybody other than a lawyer;  
17 correct?

18 MR. FARRELL: Objection to form,  
19 foundation, misstates his testimony,  
20 asked and answered.

21 THE WITNESS: I did speak with  
22 counsel about this. And one of the  
23 issues again in this case was the  
24 issue of attorney/client privilege.

25 BY MR. PLACITELLA:

1 Q. And that's why I'm saying to you  
2 "other than lawyers." You never conducted  
3 any investigation to see if anybody other  
4 than a lawyer provided information to the  
5 board of directors relevant to topic  
6 number 7; correct?

7 MR. FARRELL: Objection to form,  
8 foundation, asked and answered.

9 THE WITNESS: I didn't.

10 BY MR. PLACITELLA:

11 Q. Okay. Now, going back to  
12 Exhibit 225...?

13 MR. FARRELL: Do you want to give  
14 me -- that one, yep.

15 BY MR. PLACITELLA:

16 Q. If you go to page 8.

17 MR. FARRELL: Sorry. You said  
18 225?

19 MR. PLACITELLA: Correct.

20 BY MR. PLACITELLA:

21 Q. You go to page 8. Do you see  
22 that?

23 A. Yes.

24 Q. Okay. There's a topic under 1E  
25 that says: Lawsuit, slash, claims, AS plus

1 3, with the exception of precedent; then it  
2 has a P for "permanent." Do you see that?

3 A. Yes.

4 Q. Do you know what that means?

5 MR. FARRELL: Objection to form,  
6 foundation, beyond the scope of the  
7 deposition notice.

8 THE WITNESS: No. I didn't  
9 prepare this, and I didn't get a  
10 chance to question anything about  
11 this. So, no, I don't.

12 BY MR. PLACITELLA:

13 Q. Okay. On page 12 there's a  
14 section on insurance, number 3. Do you see  
15 that?

16 A. I do.

17 Q. Okay. And there's a section  
18 under 3A called Liability, and it says P for  
19 "permanent." Do you see that?

20 A. Yes.

21 Q. And one of the topics you were  
22 asked to prepare for today were on issues of  
23 insurance; correct?

24 MR. FARRELL: Objection to form,  
25 foundation, misstates the deposition

1 notice topic.

2 THE WITNESS: I -- can I look at  
3 the deposition notice --

4 BY MR. PLACITELLA:

5 Q. Sure.

6 A. -- again and see precisely what  
7 it said?

8 Q. Sure.

9 A. So insurance records falls under  
10 3A in the designated list.

11 Q. Right. And my question is: Did  
12 you look at any of the insurance files that  
13 were in the possession of BASF in  
14 preparation for today's deposition?

15 MR. FARRELL: Objection to form,  
16 foundation.

17 THE WITNESS: No.

18 BY MR. PLACITELLA:

19 Q. Okay. Do you know whether  
20 Engelhard ever had a litigation hold  
21 directive go out after being sued in the  
22 Westfall case to preserve any and all  
23 documents relating to Emtal talc?

24 MR. FARRELL: Objection to form,  
25 foundation, beyond the scope of the

1 notice.

2 THE WITNESS: I understand from  
3 Mr. Dornbusch's testimony that, that  
4 he understood and that the corporation  
5 understood the need for litigation  
6 hold. I'm not sure what his exact  
7 words were. But there was discussion  
8 of that in his testimony.

9 BY MR. PLACITELLA:

10 Q. Okay. Other than whatever  
11 Mr. Dornbusch said, did you have any other  
12 knowledge in preparation or all the  
13 background work that you've done on the, the  
14 issue of litigation hold post Westfall?

15 MR. FARRELL: Objection to form,  
16 foundation, beyond the scope of the  
17 notice.

18 THE WITNESS: No, I haven't.

19 BY MR. PLACITELLA:

20 Q. Okay. I want to spend some time  
21 now talking to you about topic number 2 and  
22 topic number 1.

23 Topic number 1 is [reading]: The  
24 reasons recorded, written, or represented as  
25 to why claims or lawsuits alleging injury

1 to, due to exposure to Emtal were settled,  
2 dropped, or dismissed and the amounts paid  
3 to settle each of such cases.

4 Do you see that?

5 A. Yes, I do.

6 Q. And topic number 2 is [reading]:  
7 The factual basis for an authority to issue  
8 on behalf BASF/Engelhard.

9 And then it talks about letters,  
10 responses, and representations. Do you see  
11 that?

12 A. Yes, I do.

13 Q. Okay. Since they are  
14 interrelated, I'll try to do them together  
15 and make this a little shorter; okay?

16 A. Yes. And can I make one comment  
17 on these two? Again, these are really  
18 broad, broadly worded topics; and they could  
19 cover, as you know, hundreds or even  
20 thousands of cases. So I'm not prepared to  
21 talk about every case in every detail of  
22 every case or dates. But I can talk to  
23 specific ones if you want to talk about --

24 Q. I appreciate that.

25 A. -- specific ones.

1 Q. And then topic number 8, which is  
2 interrelated, talks about the nature,  
3 extent, and limits of Cahill's role in  
4 defending the cases. Do you see that?

5 A. Yes, I do.

6 Q. All right. So do you know where  
7 the general defense of asserting that there  
8 was no asbestos in Emtal talc originated?

9 MR. FARRELL: Objection --

10 BY MR. PLACITELLA:

11 Q. Where did that come from?

12 MR. FARRELL: Objection to form,  
13 foundation.

14 BY MR. PLACITELLA:

15 Q. You can answer.

16 A. I'm sorry, regarding the absence  
17 of asbestos in talc --

18 Q. Correct.

19 A. -- specifically?

20 Q. In a Emtal talc specifically,  
21 where that defense originated.

22 A. Well, that.

23 MR. FARRELL: One second.

24 Are you asking the identity of a  
25 person or a party or -- I'm not

1 following your question. I'm trying  
2 to figure out if there's a privilege  
3 objection here or not.

4 BY MR. PLACITELLA:

5 Q. Well, I'll ask the question this  
6 way: Do you know what the factual basis was  
7 for the defense that was asserted in the  
8 talc cases, the Emtal talc cases, that there  
9 was no evidence of asbestos in Emtal talc?

10 MR. FARRELL: Objection to form,  
11 foundation, misstates the record.

12 BY MR. PLACITELLA:

13 Q. You can answer.

14 A. So I can speak to some extent  
15 about this. It was obviously the defense.  
16 And the specific topic that you're speaking  
17 of, the absence of asbestos in talc, was  
18 only part of that defense, that strategy  
19 that was developed. But it was developed by  
20 Cahill. So I can only speak to some extent  
21 about that.

22 Part of the factual basis was the  
23 Ashton affidavit. There are -- parts of the  
24 defense are part of the privileged record  
25 that I haven't been able to see. So I can

1     only speak to the part that I know about.

2             Q.     What was the source of the  
3     information for the defense that there was  
4     no evidence of asbestos in Emtal talc?

5             MR. FARRELL:   Objection to form,  
6     foundation, misstates the record.

7             THE WITNESS:   Again, this was  
8     done at Cahill, so I can only speak to  
9     it to a certain extent.   One of the  
10    sources was the information in the  
11    Ashton document.   Those were published  
12    articles and studies regarding the  
13    historical record related to asbestos  
14    in talc.   It also included some  
15    studies in and analyses that had been  
16    done specifically on Emtal talc.

17            My understanding, I believe from  
18    testimony that, that Cahill people  
19    provided, was that they had other  
20    information and other analyses that  
21    went into the development of that  
22    defense.   I haven't seen it because I  
23    haven't seen the privileged documents.

24    BY MR. PLACITELLA:

25            Q.     You understand that Ashton was an

1 expert hired by Cahill?

2 MR. FARRELL: Objection to form,  
3 foundation, misstates the record.

4 THE WITNESS: I don't know who  
5 hired him. I know he worked for J&J.  
6 He was part of the group that put  
7 together that document. I'm not sure  
8 exactly what their relationship with  
9 him was.

10 BY MR. PLACITELLA:

11 Q. Okay. He never worked for  
12 Engelhard; correct?

13 A. Not that I know.

14 Q. Never worked for BASF?

15 A. Not that I know.

16 Q. The information he provided that  
17 you said was part of the factual foundation  
18 for the "no asbestos" did not originate with  
19 an Engelhard employee; is that fair?

20 MR. FARRELL: Objection to form,  
21 foundation, misstates Mr. Steinmetz's  
22 testimony.

23 THE WITNESS: My understanding  
24 about him was that he was a J&J  
25 employee who had knowledge of the

1 Johnson mine because Johnson had  
2 previously owned that. I don't have  
3 any information that he was ever a  
4 BASF or an Engelhard employee.

5 BY MR. PLACITELLA:

6 Q. Was -- do you know of a basis for  
7 the assertion that there was no evidence of  
8 asbestos in Emtal talc other than -- well,  
9 scratch that.

10 What is your understanding of  
11 the first time that defense was asserted,  
12 that there was no evidence of asbestos in  
13 Emtal talc?

14 MR. FARRELL: Objection to form,  
15 foundation.

16 THE WITNESS: And, I'm sorry,  
17 you're talking about the assertion  
18 from the, from the perspective of the  
19 defense, the legal defense team at  
20 Cahill?

21 BY MR. PLACITELLA:

22 Q. Well, they're -- they were your  
23 lawyers; right? I mean, it was Engelhard  
24 and BASF's lawyers; right?

25 A. But as I mentioned, it was Cahill

1 that developed the defense strategy. So I'm  
2 just trying to figure out, when you talk  
3 about the assertions, whether you're talking  
4 about the assertions --

5 Q. Okay.

6 A. -- that Cahill made.

7 Q. You authorized Cahill to develop  
8 that strategy; correct?

9 MR. FARRELL: Objection to form,  
10 foundation.

11 THE WITNESS: My understanding is  
12 yes.

13 BY MR. PLACITELLA:

14 Q. Okay. Was there anyone who  
15 worked for Engelhard with firsthand  
16 knowledge who was able to provide facts to  
17 support the defense that there was no  
18 asbestos in Emtal talc?

19 MR. FARRELL: Objection to form,  
20 foundation, misstates the record.

21 THE WITNESS: Could you repeat  
22 that again.

23 BY MR. PLACITELLA:

24 Q. Sure. Was there anyone who  
25 worked for Engelhard with firsthand

1 knowledge who was able to provide facts to  
2 support the defense there was no asbestos in  
3 Emtal talc?

4 MR. FARRELL: Same objections.

5 THE WITNESS: I presume you're  
6 talking about Engelhard employees when  
7 you say "who worked for Engelhard."

8 BY MR. PLACITELLA:

9 Q. Correct.

10 A. My -- from what I've read, I, I  
11 would, I believe that there were people who  
12 were available. How they were used or if  
13 they were used I don't know because I don't  
14 have any information regarding the  
15 development of the, of the defense strategy  
16 other than the fact that there was a  
17 development within Cahill and that that  
18 development is in privileged documents.

19 Q. I don't want to know about --

20 A. So I don't know the process that  
21 they used, so I don't know who they might  
22 have contacted.

23 Q. My question to you is: Based on  
24 your investigation, are you aware of any  
25 Engelhard employee who had firsthand

1 knowledge/information/facts to support the  
2 defense there was no asbestos in Emtal talc?

3 MR. FARRELL: Objection to form,  
4 foundation, misstates the record.

5 THE WITNESS: There may have  
6 been. I don't know what went into the  
7 report or what went into their  
8 strategy, so I can't say whether there  
9 were Engelhard people involved.

10 BY MR. PLACITELLA:

11 Q. As you sit here today, are you  
12 able to identify a single Engelhard or BASF  
13 employee that was able to provide facts,  
14 scientific facts to support the defense  
15 there was no asbestos in Emtal talc?

16 MR. FARRELL: Objection to form  
17 and foundation.

18 THE WITNESS: And, I'm sorry,  
19 when you say "was able to," you mean  
20 did they? Or were they -- did they  
21 have the capability?

22 BY MR. PLACITELLA:

23 Q. Did they have information to  
24 support the defense. Do you want me to  
25 rephrase it?

1                   As you sit here today, are you  
2     able to point to a single Engelhard employee  
3     who could come forward with firsthand  
4     knowledge of the testing that was done and  
5     say there was no evidence of asbestos in  
6     Emtal talc?

7                   MR. FARRELL:   Objection to form,  
8                   foundation, misstates the record.

9                   THE WITNESS:   I don't know who  
10                  was working for the company in 1987,  
11                  and I'd have to -- I don't know is the  
12                  answer.

13     BY MR. PLACITELLA:

14                  Q.     If -- you've read the transcripts  
15                  of Dr. Hemstock?

16                  A.     Yes.

17                  Q.     Okay.   And you've read the  
18                  transcripts he's given after the Westfall  
19                  case?

20                  MR. FARRELL:   Objection to form.

21                  THE WITNESS:   Yes.

22     BY MR. PLACITELLA:

23                  Q.     Is he a person who would have  
24                  come forward, based on his testimony, and  
25                  provide a factual basis to indicate that

1     there was no asbestos in Emtal talc, no  
2     evidence of asbestos in Emtal talc?

3             MR. FARRELL:  Objection to form,  
4             foundation, misstates the record.

5             THE WITNESS:  I'm not sure.  I'd  
6             have to go back.  I'm not sure what --  
7             when he left the company, if he was  
8             still with Engelhard in 1987.  If he  
9             was, he would have information  
10            regarding Emtal talc.

11  BY MR. PLACITELLA:

12            Q.  But his testimony, was it not,  
13            that he found both asbestos in the talc and  
14            in the ore; correct?

15            MR. FARRELL:  Objection to form,  
16            foundation, misstates Dr. Hemstock's  
17            testimony.

18            THE WITNESS:  That's a pretty  
19            complex question.  His testimony was  
20            that in certain samples they had  
21            detected trace amounts of chrysotile  
22            asbestos.

23  BY MR. PLACITELLA:

24            Q.  Okay.  I'm going to show you --  
25            I'll give you a partial transcript of

1 Dr. Hemstock. You've had the opportunity to  
2 review -- it's marked, by the way,  
3 Exhibit 3.

4 (A document previously marked as  
5 Exhibit 3 was introduced.)

6 BY MR. PLACITELLA:

7 Q. You've read the whole transcript  
8 before; correct?

9 MR. FARRELL: Do you have a  
10 complete copy?

11 MR. PLACITELLA: No, I don't. I  
12 had to bring a huge box of stuff on  
13 the train to accommodate you and the  
14 witness. But I did bring the pages  
15 that I want to ask him about.

16 If you want to take a break --  
17 we're at your office -- and you want  
18 to bring a complete copy in, we can do  
19 that.

20 MR. FARRELL: Let me do that.

21 MR. PLACITELLA: Okay.

22 THE VIDEOGRAPHER: The time is  
23 now 2:11 p.m. We're going off the  
24 record.

25 MR. PLACITELLA: Why don't we do

1           that on a break and I'll keep asking  
2           questions. And we'll come back to it.  
3           Okay?

4                   MR. FARRELL: You'll move off of  
5           this?

6                   MR. PLACITELLA: Well, I'll ask  
7           other questions. And when we take a  
8           break, you can do it, so we can keep  
9           the deposition moving.

10                   (Discussion held off the record.)

11                   THE VIDEOGRAPHER: The time is  
12           now 2:12 p.m. We are back on the  
13           record.

14   BY MR. PLACITELLA:

15           Q.    So I want to be careful how I ask  
16           it so I don't ask it too many times.

17                   As you sit here today, are you  
18           aware of any Engelhard scientist who  
19           provided information to support the defense  
20           that there was no evidence of asbestos in  
21           Emtal talc?

22                   MR. FARRELL: Objection to form,  
23           foundation, misstates the record,  
24           asked and answered.

25                   THE WITNESS: Again, the defense

1           was developed by Cahill. It was --  
2           and it was a defense that incorporated  
3           legal, regulatory and, and science  
4           issues. I don't know of any Engelhard  
5           employees who had input into it.

6       BY MR. PLACITELLA:

7           Q.    Okay. Before Engelhard asserted  
8           or gave Cahill authorization to assert this  
9           defense, did they make the Engelhard R&D  
10          scientists available to Cahill to determine  
11          whether that defense would be valid?

12               MR. FARRELL:  Objection to form,  
13          foundation, misstates the record.

14               THE WITNESS:  And, I'm sorry,  
15          what timeframe are you speaking about  
16          the...?

17       BY MR. PLACITELLA:

18           Q.    At any point in time.

19               MR. FARRELL:  Same objections.

20               THE WITNESS:  Well, they  
21          certainly made those people available  
22          in 1982; yes.

23       BY MR. PLACITELLA:

24           Q.    That wasn't the defense in 1982,  
25          though, was it?

1 MR. FARRELL: Objection to form  
2 and foundation.

3 THE WITNESS: It was the initial  
4 preparation where the information was  
5 initially transferred to Cahill.

6 BY MR. PLACITELLA:

7 Q. Right. But the Westfall case  
8 wasn't defended on the basis that there was  
9 no evidence of asbestos in Emtal talc;  
10 correct?

11 MR. FARRELL: Objection to form  
12 and foundation.

13 THE WITNESS: I'm not very  
14 familiar with the defense in that  
15 case.

16 BY MR. PLACITELLA:

17 Q. Okay. So before authorizing  
18 Cahill to assert the defense that there was  
19 no evidence of asbestos in Emtal talc, did  
20 Engelhard or BASF make sure that that  
21 defense was consistent with what was known  
22 by the Engelhard scientists about the  
23 presence of asbestos in the talc?

24 MR. FARRELL: Objection to form,  
25 foundation, asked and answered.

1 THE WITNESS: I'm sorry. Could  
2 you repeat it.

3 MR. PLACITELLA: Yeah, can you  
4 repeat it.

5 (The court reporter read back the  
6 pending question.)

7 MR. FARRELL: Same objections.

8 THE WITNESS: My general, my  
9 general feeling here is that Engelhard  
10 had -- was relying on Cahill to  
11 develop an appropriate defense.  
12 Cahill developed that defense. I'm  
13 not sure that -- of everything that  
14 went into it because of the fact that  
15 much of it is privileged. So I don't  
16 know exactly what input the Engelhard  
17 people might have had into that. So I  
18 don't know.

19 BY MR. PLACITELLA:

20 Q. Okay. So you don't know?

21 MR. FARRELL: Objection to form,  
22 foundation, asked and answered.

23 BY MR. PLACITELLA:

24 Q. Before Engelhard and BASF  
25 authorized Cahill to assert the defense that

1     there's no evidence of asbestos in Emtal  
2     talc, did they require Cahill to review the  
3     testing records and make sure that they were  
4     consistent with the representations that  
5     were being made?

6             MR. FARRELL:  Objection to form,  
7             foundation, calls for privileged  
8             information to the extent you're  
9             asking him about a communication  
10            between Engelhard and Cahill Gordon.

11            Do you want to rephrase your  
12            question to sidestep the communication  
13            part of that?

14     BY MR. PLACITELLA:

15            Q.  You are aware that Engelhard and  
16     BASF employees signed discovery responses  
17     asserting -- well, signed discovery  
18     responses in the Emtal talc litigation on  
19     behalf of Engelhard and BASF; correct?

20            MR. FARRELL:  Objection to form.

21     BY MR. PLACITELLA:

22            Q.  You're aware that happened?

23            A.  And you're talking about what  
24     timeframe, just --

25            Q.  In general.

1 A. Since --

2 MR. FARRELL: Objection to form  
3 and foundation.

4 THE WITNESS: Clearly, that --  
5 Engelhard employees did sign those.  
6 It's over a long period of time. And  
7 that's about as much as I can say  
8 without seeing a specific instance in  
9 front of me.

10 BY MR. PLACITELLA:

11 Q. Okay. You're aware that in  
12 discovery responses both Engelhard and BASF  
13 asserted that there was no evidence of  
14 asbestos in Emtal talc; correct?

15 MR. FARRELL: Objection to form,  
16 foundation, misstates the record.

17 THE WITNESS: I'm sorry. Could  
18 you repeat it.

19 BY MR. PLACITELLA:

20 Q. You're aware that in discovery  
21 responses both Engelhard and BASF took the  
22 position that there was no asbestos in Emtal  
23 talc; correct?

24 MR. FARRELL: Objection to form,  
25 foundation, misstates the record,

1           vague as to which interrogatory  
2           response you're talking about.

3           THE WITNESS: Again, it would  
4           depend on which one we're talking  
5           about specifically. Some may have;  
6           some may not have.

7           In general, these cases were all  
8           very different. They had different  
9           complaints; they were settled in  
10          different ways; they had different  
11          facts associated with each case.  
12          There may have been different types of  
13          interrogatories; there may have been  
14          different types of depositions.

15          In some cases, whether or not  
16          there was asbestos in the talc may not  
17          have even been an issue and may not  
18          have even been involved in the  
19          defense.

20          So to answer that, I'd have to  
21          look, like I said, at the individual  
22          documents and comment.

23       BY MR. PLACITELLA:

24          Q. That's fine. I was just trying  
25          to make it a shorter deposition. But we'll

1 go through them. Okay.

2 Am I correct that Engelhard was  
3 aware that plaintiffs were being asked to  
4 dismiss their cases on the basis of the  
5 assertion that there was no asbestos in  
6 Emtal talc?

7 MR. FARRELL: Objection to form  
8 and foundation.

9 THE WITNESS: I've seen a few  
10 examples of letters where that type  
11 of, of information was included in a  
12 letter. Often it was included with  
13 other parts of the Emtal defense, such  
14 as product-ID issues and other things.

15 In general, though, again, I'd  
16 have to look at each case  
17 independently because they're all  
18 different, they all had different  
19 outcomes for different reasons, just  
20 so many different types of issues that  
21 were raised that you can't make a  
22 blanket statement for all of them.

23 BY MR. PLACITELLA:

24 Q. What was my question, sir?

25 MR. FARRELL: Objection,

1 argumentative.

2 THE WITNESS: I'm sorry, I  
3 thought I answered it.

4 BY MR. PLACITELLA:

5 Q. What was it?

6 A. I don't -- could you repeat it.

7 MR. FARRELL: Objection,  
8 argumentative.

9 BY MR. PLACITELLA:

10 Q. Okay. Sir, I'm asking you:  
11 Engelhard was aware that plaintiffs were  
12 being asked to dismiss their cases on the  
13 basis that there was no asbestos in Emtal  
14 talc; correct?

15 MR. FARRELL: Objection to form,  
16 foundation, asked and answered.

17 THE WITNESS: And the reason I  
18 answered it the way I did was because  
19 your question was that they were  
20 asking plaintiffs to do that. And my  
21 answer was that in some case that may  
22 have part of the communication between  
23 Cahill and plaintiffs, but not in  
24 every case.

25 In fact, in most cases there were

1           probably other reasons that they were  
2           communicating and asking and bringing  
3           in other defense strategies.

4       BY MR. PLACITELLA:

5           Q.     With all due respect, sir, I'll  
6           move to strike your answer because it's not  
7           responsive to my question.

8                     Sir, was the letters and the  
9           representations concerning the absence of  
10          asbestos in Emtal talc authorized by  
11          Engelhard?

12                    MR. FARRELL:   Objection to form,  
13           foundation, asked and answered now for  
14           a third time.

15                    THE WITNESS:   So that's a  
16           slightly different question.

17                    Engelhard obviously signed off on  
18           many of those documents, if they were  
19           interrogatories or responses or  
20           something like that.   In many cases  
21           letters may have been sent that the,  
22           that the Engelhard people didn't see  
23           because they were depending on Cahill  
24           to provide the defense; and so not  
25           every piece of information or paper

1           went across an Engelhard desk for  
2           approval.

3                   So in some cases they may have,  
4           to answer your question. But in many  
5           cases, maybe most cases, I don't know  
6           that they were.

7 BY MR. PLACITELLA:

8           Q. Sir, I didn't ask you whether  
9           each piece of paper was being approved. I  
10          said: Did Engelhard and BASF authorize  
11          Cahill to make representations that there  
12          was no asbestos in Emtal talc?

13                   MR. FARRELL: Objection to  
14          form --

15 BY MR. PLACITELLA:

16          Q. Authorize.

17                   MR. FARRELL: Objection to form,  
18          foundation, asked and answered.

19                   THE WITNESS: Again, BASF  
20          authorized them to put together a  
21          defense strategy. That defense  
22          strategy included many elements. It  
23          included, first and foremost, product  
24          ID. That was as testified by  
25          Mr. Joslyn.

1           They also included jurisdictional  
2           issues that may or may not have been  
3           important in settling a case.

4           And then they also included the  
5           absence of asbestos in the talc. So  
6           they were all parts of the defense.

7           Different letters contained  
8           different information. It depends on  
9           what the case was, what the facts of  
10          the case was -- were. And so there  
11          may have been different documents sent  
12          at different times that may or may not  
13          have been approved or part of the  
14          approved defense strategy that Cahill  
15          put together.

16          So it's, it's impossible to  
17          answer that as a blanket yes or no.

18          Q.    What was my question, sir?

19               MR. FARRELL:  Objection,  
20               argumentative.

21               THE WITNESS:  I guess if you  
22               repeat it again, I'll try again.

23          BY MR. PLACITELLA:

24          Q.    Do you have any idea what my  
25          question was?

1 MR. FARRELL: Objection,  
2 argumentative.

3 THE WITNESS: I thought I did.  
4 But if I got it wrong, I'll try again.

5 BY MR. PLACITELLA:

6 Q. Do you know what my question was?

7 MR. FARRELL: Objection,  
8 argumentative.

9 BY MR. PLACITELLA:

10 Q. You don't; right.

11 Next question: Was Cahill, BASF,  
12 and Engelhard aware that cases or some cases  
13 were being settled at low values based upon  
14 the representation that there was no  
15 asbestos in Emtal talc?

16 MR. FARRELL: Objection to form,  
17 foundation.

18 THE WITNESS: So I guess my first  
19 question about this is where you  
20 mention low values. I'm not sure what  
21 you mean by that because the value is  
22 what the plaintiff puts on the  
23 settlement.

24 So I don't know that you would  
25 call something a low settlement if

1           that's what the plaintiff thought was  
2           fair.

3       BY MR. PLACITELLA:

4           Q.     Okay. That's a fair question.  
5       So what the plaintiff put on the settlement,  
6       that would include whether they could prove  
7       their case; right?

8           MR. FARRELL:   Objection to form.

9           THE WITNESS:   Yes. It would  
10          include things like was there a  
11          product- identification issue, were  
12          there statute-of-limitations issues.  
13          I mean, we've seen many of these  
14          issues, even in the case that were a  
15          part of the one that we're discussing  
16          today.

17          Were there issues related to  
18          personal jurisdiction? Were there  
19          issues related to medical fraud?

20          There were a lot of things that  
21          went into this. So those all would  
22          have a bearing on what type of  
23          settlement, obviously, that would be  
24          appropriate and acceptable to the  
25          plaintiff or -- and to the, to the

1 defense.

2 So I guess in order to answer  
3 these questions, it really has to be  
4 on a case-specific basis because it's  
5 difficult to talk across all of these  
6 hundreds or thousands of cases are all  
7 so very different.

8 BY MR. PLACITELLA:

9 Q. Sir, if you can't prove there was  
10 asbestos in the talc, your case is over;  
11 correct?

12 MR. FARRELL: Objection to --

13 BY MR. PLACITELLA:

14 Q. There's nothing else to worry  
15 about; right?

16 MR. FARRELL: Objection to form,  
17 foundation, assumes facts.

18 THE WITNESS: The first thing I  
19 would look at is was the product even  
20 in the, in the facility? Was there a  
21 product-identification issue.

22 We have one of the cases in, one  
23 of the cases that were in this, in  
24 this case, for example, was a Harshaw  
25 case where it was dismissed because

1 Harshaw wasn't selling Emtal talc, for  
2 example.

3 BY MR. PLACITELLA:

4 Q. Did I ask you anything about  
5 product identification, sir?

6 A. No, but --

7 MR. FARRELL: Object -- one  
8 moment.

9 BY MR. PLACITELLA:

10 Q. Sir --

11 MR. FARRELL: Objection,  
12 argumentative.

13 BY MR. PLACITELLA:

14 Q. Sir, let me ask the question  
15 again.

16 If you can't prove there was  
17 asbestos in the talc, you don't have to get  
18 to any other issue; correct?

19 MR. FARRELL: Objection to form,  
20 foundation.

21 THE WITNESS: And if you could  
22 prove more easily that there was never  
23 a product in the, in the facility,  
24 that's easier to do; and you don't  
25 have to go any further either. So it

1 depends on the case.

2 BY MR. PLACITELLA:

3 Q. Sir, if you can't prove there was  
4 asbestos in the talc, there's no reason to  
5 even look at product identification;  
6 correct?

7 MR. FARRELL: Objection to form,  
8 foundation, asked and answered.

9 THE WITNESS: Except that we know  
10 that some cases were settled whether  
11 or not companies claimed to have  
12 asbestos in their talc or not, and  
13 they were settled in the identical  
14 same ways for all talc manufacturers.

15 So all I'm saying is that I'm --  
16 I'm not a lawyer. I just know that  
17 there are a lot of things that go into  
18 this. And it's not just a matter of  
19 whether or not there's asbestos in the  
20 talc.

21 BY MR. PLACITELLA:

22 Q. Sir, have you had any media  
23 training?

24 MR. FARRELL: Objection to form,  
25 argumentative.

1 THE WITNESS: Never.

2 BY MR. PLACITELLA:

3 Q. Have you ever practiced  
4 depositions on videotapes?

5 A. Never.

6 Q. Okay. Can you prove a case  
7 alleging exposure to -- asbestos exposure  
8 involving Em- -- talc without proving  
9 there's asbestos in the talc? Can you prove  
10 it?

11 MR. FARRELL: Objection to form,  
12 foundation, calls for a legal  
13 conclusion, asked and answered three  
14 or four times now.

15 THE WITNESS: I'm -- I really  
16 have no idea. I'm not a lawyer.

17 BY MR. PLACITELLA:

18 Q. Okay.

19 A. I just don't know if you could or  
20 not.

21 Q. Okay. Am I correct that  
22 Engelhard and BASF was aware and constantly  
23 updated concerning the status of legal  
24 strategies being used to defend the Emtal  
25 talc cases?

1 MR. FARRELL: Object --

2 THE WITNESS: Excuse me.

3 MR. FARRELL: Objection to form,  
4 foundation.

5 THE WITNESS: I'm not sure if the  
6 word "constantly" is accurate. I,  
7 I -- my understanding is there were  
8 regular updates. I just don't know  
9 what the term "constant" means.

10 BY MR. PLACITELLA:

11 Q. Do you know what products the  
12 Emtal talc was used in as a constituent?

13 MR. FARRELL: Object -- objection  
14 to form, foundation, beyond the scope  
15 of the notice.

16 MR. PLACITELLA: Well, with all  
17 due respect, he's the one that brought  
18 up product ID, not me.

19 MR. FARRELL: I'm sorry. I've  
20 stated an objection. Which topic in  
21 your notice does that relate to?

22 MR. PLACITELLA: I'm following up  
23 on the witness' answer.

24 BY MR. PLACITELLA:

25 Q. Do you know --

1 MR. FARRELL: Objection to form,  
2 foundation, beyond the scope of the  
3 notice.

4 BY MR. PLACITELLA:

5 Q. Go ahead.

6 A. I've seen a lot of this in the  
7 past, and I know some of the uses and  
8 applications. I just don't remember  
9 everything, obviously.

10 Q. Well, tell me what you remember.

11 A. Emtal talc was used in the rubber  
12 industry; tire-and-rubber industry, it was  
13 fairly commonly used. It was used to some  
14 extent in auto-body fillers. I believe  
15 there were uses in paints and other types of  
16 coatings.

17 Q. Was it even used in children's  
18 balloons; right?

19 MR. FARRELL: Objection to form,  
20 foundation, beyond the scope of the  
21 notice.

22 THE WITNESS: There may have been  
23 some used at some point; yes.

24 BY MR. PLACITELLA:

25 Q. Now...

1 (A document previously marked as  
2 Exhibit 131 was introduced.)

3 BY MR. PLACITELLA:

4 Q. You have in front of you  
5 Exhibit 131, which is a letter from Cahill  
6 Gordon dated November 24th -- I'm sorry  
7 July 24th, 1996. Do you see that?

8 A. I do, yes.

9 Q. And you've seen this before;  
10 correct?

11 A. I believe. I've seen a lot of  
12 these. I think I've seen this one.

13 Q. Okay. In this letter, Cahill  
14 Gordon writes to Mr. Bevan; correct?

15 A. Yes.

16 Q. And he -- and they write  
17 requesting dismissal of Mr. Bevan's Emtal  
18 talc cases; correct?

19 MR. FARRELL: Objection to form.

20 THE WITNESS: Is it okay if I  
21 read through it real quickly.

22 BY MR. PLACITELLA:

23 Q. Please. Take your time.

24 A. Okay. I've read it.

25 Q. He states -- and I highlighted

1 the part I want to talk to you about --  
2 [reading]: Simply, the basis for this  
3 request is the same reason that you and  
4 Mr. Economus have dismissed certain other  
5 plaintiffs' actions against Emtal.

6 Do you see that?

7 A. Yes, I do.

8 Q. [Reading]: Namely, this action  
9 is an asbestos case and there is no evidence  
10 whatsoever that talc mined and milled by  
11 Emtal contained asbestos.

12 Do you see that?

13 A. Yes.

14 Q. What's the factual basis for that  
15 statement?

16 MR. FARRELL: Objection to form  
17 and foundation.

18 THE WITNESS: Well, first, a  
19 couple of comments. This was one  
20 document out of maybe a dozen or so of  
21 who knows how many documents and  
22 back-and-forths there were between  
23 these, between these attorneys.

24 But I would -- reading this,  
25 the -- it doesn't say what -- he

1 doesn't describe what the factual  
2 basis is. But we know that Cahill had  
3 developed this legal strategy and that  
4 the factual basis was both science and  
5 nature, that the science of what the  
6 data showed, what analyses showed, as  
7 well as a regulatory and legal  
8 analysis.

9 Again, I don't know everything  
10 that went into that. But I would  
11 think that the factual basis of this  
12 was the legal strategy and analysis  
13 that Cahill developed.

14 BY MR. PLACITELLA:

15 Q. And this letter was authorized by  
16 Engelhard; correct?

17 MR. FARRELL: Objection to form  
18 and foundation.

19 THE WITNESS: I don't know that  
20 this was authorized by Engelhard.

21 BY MR. PLACITELLA:

22 Q. Well, Cahill couldn't send a  
23 letter like this without authorization from,  
24 from Engelhard; correct?

25 MR. FARRELL: Objection to form

1 and foundation, asked and answered.

2 THE WITNESS: I would imagine  
3 they could. I don't know if they did  
4 in this case, but I think they could;  
5 yes.

6 BY MR. PLACITELLA:

7 Q. So are you aware of instances  
8 where representations are made like this --  
9 do you have -- let me strike that.

10 What evidence do you have as you  
11 sit here today that this letter was not  
12 authorized?

13 A. I don't see evidence that it was  
14 authorized.

15 Q. Didn't you give Cahill Gordon a  
16 general authorization to represent you and  
17 to write letters like this?

18 MR. FARRELL: Objection to form,  
19 foundation.

20 THE WITNESS: My understanding is  
21 the authorization was to develop and  
22 implement an appropriate legal  
23 strategy.

24 BY MR. PLACITELLA:

25 Q. So are you sitting here today

1 saying this letter was not authorized?

2 MR. FARRELL: Objection to form,  
3 foundation, asked and answered.

4 THE WITNESS: I'm just saying  
5 that I don't know that it was  
6 specifically authorized in this case  
7 by anybody at Engelhard.

8 BY MR. PLACITELLA:

9 Q. That wasn't my question. My  
10 question wasn't whether this piece of paper.

11 The representation that was made  
12 in this document that there's no evidence  
13 whatsoever, is that a representation that  
14 was authorized by Engelhard?

15 MR. FARRELL: Objection to form,  
16 foundation, asked and answered several  
17 times now.

18 THE WITNESS: As I mentioned, the  
19 legal strategy was known to Engelhard.  
20 They had worked -- they had hired  
21 Cahill to development and implement an  
22 appropriate strategy.

23 To say that every word in this  
24 letter was authorized is not -- it  
25 probably wasn't. So if you're

1           wondering about the term "absolutely  
2           no" or "no evidence whatsoever," was  
3           that specifically authorized, I doubt  
4           it. I don't think that anybody at  
5           Engelhard reviewed this letter for  
6           that type of thing.

7       BY MR. PLACITELLA:

8           Q.    Well, sir, you've read the Cahill  
9           compilation; correct?

10               MR. FARRELL:  Objection to form.

11               THE WITNESS:  I have seen those  
12           parts that aren't -- I haven't read  
13           it. I've seen most of the documents  
14           in there that aren't privileged.

15       BY MR. PLACITELLA:

16           Q.    Right. You've looked at the  
17           nonprivileged documents and you've given, in  
18           fact, in the Fields case almost a whole day  
19           of deposition about those documents; right?

20           A.    About some of them.

21           Q.    Yeah. Do those documents support  
22           the assertion that there is no evidence  
23           whatsoever?

24               MR. FARRELL:  Objection to form,  
25           foundation.

1 THE WITNESS: So we're getting to  
2 the question of whether or not there  
3 was asbestos in the talc. And --

4 BY MR. PLACITELLA:

5 Q. No. I'll -- with all due  
6 respect, I don't want to stop you. What I'm  
7 asking you is --

8 MR. FARRELL: He's in the middle  
9 of answering a question.

10 BY MR. PLACITELLA:

11 Q. I'm asking you --

12 MR. FARRELL: Mr. Placitella, you  
13 cannot cut off a witness in the middle  
14 of a responding to your question.

15 MR. PLACITELLA: All right. I'll  
16 withdraw the question. I'll ask it a  
17 different way.

18 BY MR. PLACITELLA:

19 Q. Yes or no, do the documents in  
20 the Cahill compilation support the assertion  
21 that there was no evidence whatsoever that  
22 the talc, the Emtal talc contained asbestos?

23 MR. FARRELL: That was the  
24 question he just started answering.

25 MR. PLACITELLA: No, it wasn't.

1 MR. FARRELL: You cut him off and  
2 withdrew the question.

3 BY MR. PLACITELLA:

4 Q. Yes or no?

5 MR. FARRELL: Objection to form,  
6 foundation, calls for expert  
7 testimony.

8 THE WITNESS: The -- this isn't a  
9 yes-or-no answer.

10 BY MR. PLACITELLA:

11 Q. All right. Fine.

12 A. I'm sorry. It's just very  
13 complicated, and it deserves more than a yes  
14 or no.

15 Q. You don't have to apologize. If  
16 you don't understand "no evidence  
17 whatsoever," that's fine.

18 MR. FARRELL: Objection,  
19 argumentative, misstates his  
20 testimony.

21 MR. PLACITELLA: Okay.

22 THE WITNESS: One other comment I  
23 would make about --

24 BY MR. PLACITELLA:

25 Q. There's no question pending, sir.

1 MR. FARRELL: Go ahead,  
2 Mr. Steinmetz.

3 MR. PLACITELLA: There is no  
4 question pending.

5 MR. FARRELL: The witness has  
6 just asked --

7 MR. PLACITELLA: No.

8 MR. FARRELL: -- asked for an  
9 opportunity to amplify his testimony.

10 MR. PLACITELLA: No. There's no  
11 question pending.

12 MR. FARRELL: Go ahead,  
13 Mr. Steinmetz.

14 MR. PLACITELLA: Here is  
15 Exhibit 228. I want you to take a  
16 look at it.

17 (A document previously marked as  
18 Exhibit 228 was introduced.)

19 THE WITNESS: Yeah, I was just  
20 going to say the, the one comment I  
21 have is the next paragraph down, the  
22 writer does talk about the fact that  
23 they've disagreed concerning  
24 particular issues of liability and  
25 causation. So there was obviously a

1 great deal -- or there were more than  
2 just this communication between the  
3 people. So there may have been other  
4 issues that came up. That's all I've  
5 got to say.

6 BY MR. PLACITELLA:

7 Q. What's that got to do with "no  
8 evidence whatsoever"?

9 MR. FARRELL: Objection,  
10 argumentative.

11 THE WITNESS: It, it just goes to  
12 my point that in every one of these  
13 cases there's more than just one issue  
14 as part of the, as part of the  
15 defense. That's all.

16 BY MR. PLACITELLA:

17 Q. Move to strike, sir, with all due  
18 respect.

19 MR. FARRELL: Not liking, not  
20 liking a witness' answer is not --

21 MR. PLACITELLA: Please, that's  
22 not --

23 MR. FARRELL: -- grounds to  
24 strike --

25 MR. PLACITELLA: That's not a

1 proper objection. Please don't do  
2 that. Please don't do it.

3 MR. FARRELL: Well, please don't  
4 make baseless --

5 MR. PLACITELLA: Please don't do  
6 it.

7 MR. FARRELL: -- baseless motions  
8 to strike --

9 MR. PLACITELLA: Please don't do  
10 it.

11 MR. FARRELL: -- please don't  
12 interrupt the witness in the middle of  
13 his answer. Please don't direct the  
14 witness not to amplify his testimony  
15 when he's permitted to do so.

16 MR. PLACITELLA: Okay.

17 BY MR. PLACITELLA:

18 Q. You have in front of you  
19 Exhibit 228. Do you see that?

20 A. Yes.

21 Q. This is a letter, March 2nd,  
22 1990, to Mr. Smith. Do you see that?

23 A. I do.

24 Q. Okay. And in this letter  
25 Engelhard asks Mr. Smith to dismiss his

1 cases on the basis that the Emtal talc did  
2 not contain asbestos; correct?

3 MR. FARRELL: Objection to form  
4 and foundation.

5 THE WITNESS: May I read it real  
6 quickly?

7 MR. BOISE: Mischaracterizes the  
8 letter as well.

9 THE WITNESS: Okay. I've read  
10 through it.

11 BY MR. PLACITELLA:

12 Q. Okay. In this letter, Mr. Smith  
13 is asking -- being asked to dismiss his  
14 cases on the basis that the Emtal talc did  
15 not contained asbestos; correct?

16 MR. FARRELL: Objection to form,  
17 foundation, misstates the letter.

18 THE WITNESS: Well, it does say  
19 that there is an affidavit prepared by  
20 Ashton indicating that the mine --  
21 that the talc mined by Emtal did not  
22 contain asbestos.

23 It does ask for dismissal; but it  
24 doesn't necessarily say that they want  
25 dismissal just because of that, as I

1 read it.

2 And there may have been other  
3 issues here too.

4 BY MR. PLACITELLA:

5 Q. Well, show them to me, sir. What  
6 other issues are in this letter other than  
7 the fact that Engelhard is telling this  
8 lawyer that there's no asbestos in the Emtal  
9 talc? What other issues are in this letter?

10 MR. FARRELL: Objection to form,  
11 foundation, misstates Mr. Steinmetz's  
12 testimony, and misstates the letter.

13 THE WITNESS: I, I can't -- I  
14 don't necessarily -- I can read  
15 through this and see what other things  
16 are referred to. I'm just -- in  
17 general, so many tire worker cases  
18 were, were settled because of reasons  
19 other than asbestos, as we know.

20 BY MR. PLACITELLA:

21 Q. Sir, you told me we had to go  
22 through each individual letter. So that's  
23 what I'm doing. And I'm asking you where in  
24 this letter does it talk about anything  
25 other than you're asking for a dismissal

1 based on the fact -- on your assertion that  
2 there was no asbestos in the Emtal talc?

3 MR. FARRELL: Objection --

4 BY MR. PLACITELLA:

5 Q. Show me in the letter.

6 MR. FARRELL: Objection to form,  
7 foundation, misstates Mr. Steinmetz's  
8 testimony, misstates the letter, asked  
9 and answered.

10 THE WITNESS: I guess my problem  
11 with this letter is that this is part  
12 of a bigger picture. And there's the  
13 sentence right before that second  
14 paragraph says [reading]: The purpose  
15 of the letter is to obtain a response  
16 to the request previously made by  
17 local counsel that you dismiss Emtal.

18 And then it goes on to say:  
19 Here's some information regarding  
20 whether or not there was material --  
21 whether there was asbestos in the  
22 Emtal.

23 But that previous paragraph to me  
24 means that I need to look at the  
25 letter that came before this to see

1           what other claims or what other  
2           reasons they might have had for  
3           wanting to dismiss.

4       BY MR. PLACITELLA:

5           Q.    And so -- did you see this letter  
6           in preparation for your deposition?

7           A.    I don't recall this one.  I may  
8           have.  I just don't recall seeing it.

9           Q.    Did you look at all the letters  
10          that were to Mr. Smith?

11               MR. FARRELL:  Objection to form.

12               THE WITNESS:  No.  I think, as I  
13          mentioned, it would have -- there's no  
14          way in a week I could have looked at  
15          thousands of cases, each of which  
16          might have thousand -- 10, 15, 20  
17          letters.  There's no way I could do  
18          it.

19       BY MR. PLACITELLA:

20           Q.    Is there any doubt that this  
21          letter was authorized by Engelhard?

22               MR. FARRELL:  Objection to form  
23          and foundation.

24               THE WITNESS:  Again, what do you  
25          mean by "authorized"?

1 BY MR. PLACITELLA:

2 Q. That Engelhard knew it was being  
3 sent and it was being sent with Englehard's  
4 permission.

5 MR. FARRELL: Objection to form  
6 and foundation.

7 THE WITNESS: I know that they  
8 were copied on the letter. I don't  
9 know if they were -- authorized it  
10 before it was sent.

11 BY MR. PLACITELLA:

12 Q. Oh, so you think that they were  
13 copied on the letter and that they didn't --  
14 that that meant that Cahill didn't have  
15 authorization to send it?

16 MR. FARRELL: Objection to form,  
17 foundation, argumentative.

18 THE WITNESS: Again, I guess  
19 I'm -- it goes back to what you mean  
20 by "authorization." I -- yes, I agree  
21 that, that Cahill -- that Engelhard  
22 understood the defense that Cahill had  
23 developed; they depended on them to  
24 implement it appropriately.

25 Whether or not they looked at

1 every letter and every piece of  
2 information before it was sent out, if  
3 that's what we mean by "authorize," I  
4 don't think that occurred. In this  
5 case, I don't know if it did or not.

6 BY MR. PLACITELLA:

7 Q. No, I'm not saying that they  
8 looked at every letter. I'm saying that  
9 Cahill had the permission of Engelhard to  
10 send letters like this out asserting that  
11 there was no asbestos in Emtal talc and  
12 asking for dismissals based on that basis?

13 MR. FARRELL: Objection to form,  
14 foundation, asked and answered.

15 MR. BOISE: Mischaracterizes the  
16 letters.

17 THE WITNESS: Again, once again,  
18 yes, I, I agree that Cahill had  
19 authorization to implement its  
20 strategy.

21 BY MR. PLACITELLA:

22 Q. Okay. And here we have the  
23 general counsel, the assistant general  
24 counsel for Engelhard getting copied on the  
25 letter, asking this lawyer to dismiss all

1 his cases on the premise that there's no  
2 asbestos in Emtal talc; correct?

3 MR. FARRELL: Objection to form,  
4 foundation, misstates the letter.

5 THE WITNESS: Again, it doesn't  
6 say: Please dismiss this based just  
7 on the fact that there's no asbestos  
8 in the Emtal.

9 It requests that they dismiss it  
10 in response -- and they're doing this  
11 in response to a request previously  
12 made by local counsel that it be  
13 dismissed.

14 That previous letter may have  
15 listed several other things. It may  
16 have gone into a lot of other issues  
17 that aren't covered in this letter.  
18 This is just a follow-up letter.

19 BY MR. PLACITELLA:

20 Q. So the answer to my question is  
21 what?

22 MR. FARRELL: Objection to form,  
23 foundation, asked and answered  
24 multiple times.

25 THE WITNESS: The answer from my

1 perspective, reading this, is that  
2 they weren't necessarily asking to  
3 dismiss Emtal based solely on the fact  
4 that talc mined by Emtal didn't  
5 contain asbestos.

6 BY MR. PLACITELLA:

7 Q. All right. I'm not going to  
8 fight. We'll let a jury decide; okay?

9 A. Yes.

10 Q. Okay. By the way, in -- on  
11 March 2nd, 1990, when this letter was  
12 written and it was copied to Mr. Fliegel,  
13 who was in-house counsel, was Engelhard  
14 aware of the depositions that were taken in  
15 the Westfall case?

16 MR. FARRELL: Objection to form  
17 and foundation.

18 THE WITNESS: My understanding is  
19 that in 19 -- I'm sorry. Do you mean  
20 Engelhard legal personnel?

21 BY MR. PLACITELLA:

22 Q. Yeah. The head of Englehard  
23 still at that time legal was Arthur  
24 Dornbusch; correct?

25 A. That's correct, yes.

1 Q. He ran the legal department;  
2 right?

3 A. That's correct. He was the  
4 general counsel.

5 Q. Was he aware of the depositions  
6 that took place in the Westfall case?

7 A. Yes, he was.

8 Q. Okay. Was Howard Sloane aware of  
9 the depositions that took place in the  
10 Westfall case?

11 A. Yes, he was.

12 MR. PLACITELLA: Only one copy of  
13 this, so I'll wait till a break.

14 THE WITNESS: Can I make one  
15 additional comment regarding the  
16 question that you just asked about  
17 Mr. Sloane -- about Mr. Dornbusch? I  
18 don't know about Mr. Sloane.

19 But I believe in his testimony  
20 Dornbusch indicated that he really  
21 wasn't following the litigation very  
22 closely, didn't remember much about  
23 the depositions in Westfall. So he  
24 may or may not have even received a  
25 copy of this letter, since it was sent

1 to Mr. Fliegel.

2 MR. PLACITELLA: Respectfully  
3 move to strike your answer -- your  
4 statement.

5 (A document previously marked as  
6 Exhibit 64 was introduced.)

7 BY MR. PLACITELLA:

8 Q. You have in front of you  
9 interrogatory number 60 -- I'm sorry --  
10 Exhibit number 64; correct?

11 A. Yes.

12 Q. And these are answers to  
13 interrogatories provided in Michigan cases  
14 by Engelhard; correct?

15 A. Yes. By Pita Realty Limited;  
16 yes.

17 Q. And you've seen these before;  
18 correct?

19 A. I -- yes, I think I do remember  
20 these. Again, they all tend to look the  
21 same after you've seen a lot of them. But I  
22 think I've seen these; yes.

23 Q. And these interrogatories were  
24 certified on behalf of Engelhard by Charles  
25 Carter. Do you see that?

1 MR. FARRELL: Objection to form.

2 THE WITNESS: He did sign off on  
3 it, yes, on the next-to-last page,  
4 yes.

5 BY MR. PLACITELLA:

6 Q. And he states [reading]: The  
7 information set forth in these responses was  
8 collected by others, and such information is  
9 not necessarily within my personal  
10 knowledge. However, on behalf of the  
11 corporation, I affirm the foregoing are true  
12 to the best of my knowledge, information,  
13 and belief.

14 Do you see that?

15 A. Yes.

16 Q. Okay. And in these interrogatory  
17 answers -- could you go to page 2.

18 A. Yes.

19 Q. It starts out [reading]: Pita  
20 did not mine, mill, manufacture, or process,  
21 market, distribute or sell asbestos or  
22 asbestos-containing products.

23 Do you see that?

24 A. I do.

25 Q. Do you know what the factual

1 basis is for that statement?

2 MR. FARRELL: Objection to form.

3 THE WITNESS: Again, the  
4 factual -- this would have been  
5 prepared by Cahill. And the factual  
6 basis would be the assessment and the  
7 analysis that they did incorporating  
8 science, regulatory, and legal  
9 information as part of their defense  
10 strategy.

11 BY MR. PLACITELLA:

12 Q. What facts are we talking about?  
13 What facts, specific facts?

14 MR. FARRELL: Objection to form,  
15 foundation, asked and answered.

16 THE WITNESS: Facts regarding the  
17 published and testing record that was,  
18 for example, included in the Ashton  
19 affidavit. There may have been other  
20 information that they looked at that I  
21 haven't seen because of privilege.

22 BY MR. PLACITELLA:

23 Q. Did they include any of the  
24 information that's in the Cahill  
25 compilation?

1 MR. FARRELL: Objection to form  
2 and foundation.

3 THE WITNESS: Again, I don't know  
4 because I haven't seen the privileged  
5 documents.

6 BY MR. PLACITELLA:

7 Q. No, any of the information that  
8 was provided to you. Is that referenced  
9 anywhere in these interrogatory answers?

10 MR. FARRELL: Objection to form  
11 and foundation.

12 THE WITNESS: I don't know. I'd  
13 have to read through the whole thing.  
14 I, I don't recall it, but I don't  
15 know.

16 BY MR. PLACITELLA:

17 Q. Well, take me at my word; it's  
18 not there.

19 MR. FARRELL: Objection to form,  
20 argumentative.

21 MR. PLACITELLA: Okay.

22 BY MR. PLACITELLA:

23 Q. Can you go to question 104 on  
24 page 56. Question 104 says [reading]:  
25 Please identify each present or past

1 employee of defendant, defendant's  
2 predecessors, or defendant's subsidiaries  
3 who has ever testified under oath or been  
4 deposed.

5 Do you see that?

6 A. I do, yes.

7 Q. Then going to the next page it  
8 asks for all the details. Do you see that?

9 A. Yes, I do.

10 Q. And the answer is "none";  
11 correct?

12 A. Yes.

13 Q. That's false; correct?

14 MR. FARRELL: Objection to form  
15 and foundation.

16 THE WITNESS: I guess I would --  
17 again, looking at this in retrospect,  
18 I know Charles Carter testified in his  
19 deposition regarding this. And, and  
20 what, what his deposition essentially  
21 said was that he didn't know about any  
22 of that previous testimony. He didn't  
23 know about Westfall. And so when he  
24 signed this, it was true and accurate.

25 So to the extent that "false"

1 implies that he was trying to mislead,  
2 I don't agree with it, that it was  
3 false. It was incorrect. It was a  
4 mistake. In hindsight, it obviously  
5 isn't correct because there were  
6 previous depositions. But he didn't  
7 know about it at the time.

8 BY MR. PLACITELLA:

9 Q. Sir, what steps did Engelhard  
10 take to make sure that documents like this  
11 signed by people with no knowledge  
12 whatsoever about what happened in the past  
13 provided true and accurate information?

14 MR. FARRELL: Objection to form,  
15 foundation.

16 THE WITNESS: I guess, once  
17 again, Engelhard personnel were  
18 depending on Cahill to provide the  
19 appropriate information to be  
20 truthful. And Charles Carter was,  
21 based on his testimony, was  
22 comfortable that this was accurate and  
23 correct; and so he signed off on it  
24 thinking it was true.

25 BY MR. PLACITELLA:

1 Q. But it was Engelhard who  
2 recruited Charles Carter to sign these  
3 interrogatories; correct?

4 MR. FARRELL: Objection to form,  
5 foundation, misstates the record.

6 THE WITNESS: I don't know if  
7 "recruited" is the word. I know he  
8 was an Engelhard employee.

9 BY MR. PLACITELLA:

10 Q. Well, no, he wasn't an Engelhard  
11 employee when this was signed. He had  
12 already retired, didn't he?

13 MR. FARRELL: Objection to form,  
14 foundation, beyond the scope.

15 THE WITNESS: I'm not sure of the  
16 exact years of his employ. I believe  
17 you're right. I believe I read that  
18 he wasn't currently working at  
19 Engelhard at the time that he did  
20 this, but I'm not sure.

21 BY MR. PLACITELLA:

22 Q. Here's Exhibit 227.

23 (A document previously marked as  
24 Exhibit 227 was introduced.)

25 BY MR. PLACITELLA:

1 Q. This is Exhibit 227, is a letter  
2 written to Charles Carter from Lester  
3 Fliegel; correct?

4 A. Yes.

5 Q. He was an in-house lawyer.  
6 And cc'd Mr. Dornbusch; correct?

7 A. Correct.

8 Q. And this was about the consulting  
9 agreement that they were going to pay  
10 Charles Carter to certify interrogatories  
11 and other responses, just like you're doing  
12 here; correct?

13 MR. FARRELL: Objection to form,  
14 foundation, argumentative.

15 THE WITNESS: Yes. And I won't  
16 argue with it at all. I just wasn't  
17 sure if -- whether he was still  
18 working with the company when he did  
19 it. That's all.

20 BY MR. PLACITELLA:

21 Q. So we're clear that it's a  
22 Engelhard legal department who was in charge  
23 of recruiting Mr. Carter to sign the  
24 interrogatory answers; correct?

25 MR. FARRELL: Objection to form,

1 foundation, misstates the record.

2 THE WITNESS: Again, I don't know  
3 about the word "recruit." I know they  
4 hired him to do it as a consultant.  
5 That's what it says.

6 BY MR. PLACITELLA:

7 Q. And those same legal department  
8 was aware that people testified under oath  
9 in the Westfall case that there was asbestos  
10 in Emtal talc; right?

11 MR. FARRELL: Objection to form,  
12 foundation, misstates the record.

13 THE WITNESS: Mr. Dornbusch  
14 testified that -- obviously he was  
15 involved in the initial Westfall  
16 deposition work. But he testified  
17 that he was busy being general counsel  
18 and he just didn't get involved in all  
19 the details day-to-day with each type  
20 of litigation and that, and that in  
21 general he didn't remember a lot of  
22 what had happened in the Westfall  
23 case.

24 BY MR. PLACITELLA:

25 Q. He actually signed affidavits in

1 the Westfall case, didn't he?

2 MR. FARRELL: Objection to form,  
3 foundation --

4 BY MR. PLACITELLA:

5 Q. I mean, he wasn't just  
6 overlooking it. He was involved; correct?

7 MR. FARRELL: Are you finished?  
8 Objection to form, foundation,  
9 beyond the scope of the notice.

10 THE WITNESS: No, I agree he was  
11 involved in the Westfall. What I said  
12 was he wasn't highly involved in  
13 litigation after that because he was  
14 general counsel.

15 BY MR. PLACITELLA:

16 Q. He was involved enough to be  
17 copied on the letter recruiting Charles  
18 Carter to certify the interrogatory answers;  
19 correct?

20 MR. FARRELL: Objection to form,  
21 foundation.

22 THE WITNESS: And again, he's  
23 obviously copied on this. I don't  
24 know that that's any measure of how  
25 involved he was. It may have just

1           been that when you hired somebody in  
2           that department you had to copy the,  
3           the manager. I don't know.

4                   And I'd also have to look at  
5           this -- I'm not saying he didn't, but  
6           I'm not sure that he only acted in  
7           this capacity for Emtal cases. He  
8           might have done others. I don't know.

9   BY MR. PLACITELLA:

10           Q. Can you tell me why you would  
11           have somebody certifying answers to  
12           interrogatories as true and they never  
13           looked at a single document to determine  
14           whether what was putting in there was true?  
15           Why would you do that?

16                   MR. FARRELL: Objection to form,  
17           foundation, argumentative.

18                   THE WITNESS: I really can't get  
19           into somebody's mind and try to figure  
20           out why they would hire him to do  
21           this. They hired him at -- maybe it  
22           was standard practice; maybe it still  
23           is. I don't know. I can't put myself  
24           in their head and figure out why they  
25           would do that.

1 BY MR. PLACITELLA:

2 Q. Well, you read Mr. Carter's  
3 deposition where he said he made no  
4 independent investigation to find out what  
5 he was signing was true. You remember that;  
6 correct?

7 MR. FARRELL: Objection to form,  
8 foundation.

9 THE WITNESS: I, I think he  
10 stated at some point that he depended  
11 on Cahill to get the information  
12 correct, which was probably  
13 reasonable.

14 BY MR. PLACITELLA:

15 Q. He stated that he -- did he not  
16 state that he made no -- despite his  
17 certification, he made no effort himself to  
18 determine whether the information that he  
19 was swearing to was true; correct?

20 MR. FARRELL: Objection to form,  
21 foundation; misstates Mr. Carter's  
22 verification, which states the  
23 opposite of what you just said.

24 THE WITNESS: Without having it  
25 in front of me, I really wouldn't want

1 to --

2 BY MR. PLACITELLA:

3 Q. Okay.

4 A. -- debate what he did or didn't  
5 say. You have his testimony, so I would  
6 defer to that.

7 Q. Okay.

8 MR. FARRELL: We've been going a  
9 bit over a hour. If we're going to a  
10 different document, can we take a  
11 break?

12 MR. PLACITELLA: Sure.

13 THE VIDEOGRAPHER: The time is  
14 now 3:00 p.m. we are going off the  
15 record.

16 (Recess.)

17 THE VIDEOGRAPHER: The time is  
18 now 3:14 p.m. We are back on the  
19 record.

20 BY MR. PLACITELLA:

21 Q. Okay. So can we go back to  
22 Exhibit 64 and go to question number 1. So  
23 just to be -- and question number 1, it says  
24 identify the person who provided the  
25 information answering the interrogatories.

1 Do you see that?

2 A. Yes.

3 Q. And it lists Charles Carter;  
4 correct?

5 A. Yes.

6 Q. And then go to page 58, answer  
7 107.

8 You see under A it says  
9 [reading]: Charles D. Carter participated  
10 in the gathering of records for this  
11 litigation which have been turned over to  
12 counsel?

13 A. Yes.

14 Q. That's not true, though, was it?

15 MR. FARRELL: Objection to form,  
16 foundation, argumentative.

17 THE WITNESS: I don't know. You  
18 know, I know you spoke with Charles  
19 Carter. I assume that you asked him  
20 questions. I don't remember  
21 specifically how he answered that.

22 BY MR. PLACITELLA:

23 Q. Well, he was answering these  
24 questions on behalf of your company;  
25 correct?

1 MR. FARRELL: Objection to  
2 form --

3 BY MR. PLACITELLA:

4 Q. He was certifying these on behalf  
5 of your company?

6 MR. FARRELL: Objection to form  
7 and foundation.

8 THE WITNESS: On behalf of  
9 Engelhard, yes.

10 BY MR. PLACITELLA:

11 Q. Which turned into BASF. They're  
12 one and the same, you understand that, under  
13 the law; correct?

14 MR. FARRELL: Objection to form  
15 and foundation.

16 THE WITNESS: I understand that  
17 they're the same. I don't know --

18 BY MR. PLACITELLA:

19 Q. Okay.

20 A. -- how they -- what that means  
21 legally; but yes.

22 Q. And then he certified at the end  
23 that the information is true and accurate to  
24 the best of his knowledge. And that  
25 included the fact that he supplied the

1 information for the interrogatories; right?

2 MR. FARRELL: Objection to form,  
3 foundation, misstates the verification  
4 that Mr. Carter signed.

5 THE WITNESS: That's not what it  
6 says at all to me. It says that he  
7 participated in the gathering of  
8 records. That could mean he was told  
9 what was being gathered; he may have  
10 been there when they pulled things  
11 together; they may have talked about  
12 it. I don't know that that means that  
13 he was personally responsible for  
14 pulling every record.

15 BY MR. PLACITELLA:

16 Q. Says [reading]: Charles D.  
17 Carter has participated in the gathering of  
18 this -- of records for this litigation which  
19 have been turned over to counsel; correct?

20 A. Yes, that's what it says.

21 Q. Meaning he must have looked at  
22 the records; right?

23 MR. FARRELL: Objection to  
24 form --

25 BY MR. PLACITELLA:

1 Q. He must have known what they  
2 were?

3 MR. FARRELL: Objection to form  
4 and foundation, assumes facts.

5 THE WITNESS: Reading this, it  
6 says he's participated in the  
7 gathering of records. That to me does  
8 not imply that he's look at every  
9 record or seen every piece of  
10 information. He may have looked at  
11 one record in this case. There may be  
12 others where he looked at one. I just  
13 don't know specifically. I think --

14 BY MR. PLACITELLA:

15 Q. Okay.

16 A. -- if you asked him, then he  
17 could have told you that. I don't know.

18 Q. And what did he say when he  
19 testified under oath about that?

20 MR. FARRELL: Objection to form,  
21 foundation.

22 THE WITNESS: I'm sorry, I just  
23 don't remember. I mean, there was so  
24 much to read. And I probably read it.  
25 I just don't remember it. I would

1 have to look at his deposition.

2 (Steinmetz Exhibit 4 was marked  
3 for identification.)

4 BY MR. PLACITELLA:

5 Q. Yes. You have in front of you,  
6 Steinmetz number 4, his deposition.

7 MR. BOISE: Is that the full  
8 testimony?

9 MR. PLACITELLA: Yes.

10 MR. BOISE: Do you have a copy?

11 MR. PLACITELLA: I've got one  
12 copy. But I'm happy to pass it around  
13 and put up what I'm asking.

14 BY MR. PLACITELLA:

15 Q. Can you go to page 94.  
16 94 of the deposition.

17 A. Okay. I'm just looking to see  
18 what else is in here too, if that's okay.

19 Q. Let me know when you're at 94.

20 A. Okay.

21 Q. Starting on line 6 [reading]:  
22 You have in front of you Exhibit  
23 Number 64, which for the record are  
24 answers of defendant Pita Realty  
25 Limited to plaintiff's standard

1           interrogatories submitted in the State  
2           of Michigan in the Circuit County for  
3           the County of Wayne. Do you see that?

4           He says: Yes.

5           And you see the very last page, a  
6           verification signed by you?

7           Answer: Yes.

8           Question: And than signed,  
9           according to the verification, on  
10          December 10th, 1992; correct?

11          Answer: Yes.

12          You see that?

13          A. Yes.

14          Q. That's the same Exhibit 64 that's  
15          in front of you; correct?

16          A. Yes.

17          Q. It matches up; right?

18          A. Yes.

19          Q. Okay. And the next page he's  
20          asked [reading]: It says Charles Carter --  
21          D. Carter, I'm an agent of Pita Realty  
22          Limited and duly authorized by the  
23          corporation to execute these answers to  
24          interrogatories under oath on its behalf.

25          The information set forth in this

1 response was collected by others, and such  
2 information is not necessarily within my  
3 personal knowledge. However, on behalf of  
4 the corporation, I affirm the foregoing are  
5 true to the best of my knowledge,  
6 information, and belief.

7 Right? That tracks what we just  
8 went over; right?

9 A. Yes.

10 Q. So going to the next -- 96.

11 So he's asked [reading]:

12 So the information that is the  
13 basis for the answers came from  
14 Engelhard attorneys?

15 There's an objection by  
16 Mr. Farrell, as usual.

17 The Witness: It came --

18 That was supposed to be a joke;  
19 you can laugh a little bit.

20 It came from counsel. I've told  
21 you before I don't know what was  
22 Engelhard and what was Cahill.

23 Question: Okay.

24 Answer: Okay.

25 It came through counsel from

1           either Engelhard or Cahill?

2           Yes.

3           It was information that you knew  
4 personally?

5           Answer -- after objection: No.

6           That was Mr. Boise.

7           Question: By Mr. -- and in  
8 answering these interrogatories, were  
9 you ever shown any documents?

10          Answer: Not to my recollection.

11          Question: Were you ever given  
12 any access to witnesses to talk to  
13 yourself?

14          Answer: Not to my recollection,  
15 no.

16          So in essence, the information  
17 that is in here, these sworn answers  
18 were provided entirely by the lawyers?

19          Objection, objection, objection.

20          Answer: That seems to be  
21 correct, yes.

22          Did I read that correctly?

23          A. Yes.

24          Q. So when Mr. Carter executed these  
25 answers on behalf of Engelhard, he had not

1 reviewed a single document or spoke to a  
2 single witness to verify what was in there;  
3 correct?

4 MR. FARRELL: Objection to form,  
5 foundation, misstates Mr. Carter's  
6 testimony.

7 THE WITNESS: I'd have to look at  
8 all his testimony. I don't disagree  
9 with anything that you've read here.  
10 I just haven't -- I don't have the  
11 entire testimony memorized, so I, I  
12 just can't speak to it.

13 BY MR. PLACITELLA:

14 Q. So Mr. Carter was authorized by  
15 Engelhard to sign off on sworn interrogatory  
16 answers to attest to the truth of what was  
17 in there, without speaking to a single  
18 witness or reviewing a single document;  
19 correct?

20 MR. FARRELL: Objection to form,  
21 foundation, misstates Mr. Carter's  
22 testimony.

23 THE WITNESS: He, he was saying  
24 for these interrogatories he was never  
25 shown a document. I don't know that

1 he didn't look at other documents in  
2 the past, that he had seen documents  
3 in the past, he just hadn't looked at  
4 them in this case. So, you know, this  
5 is one point in time. But he may have  
6 seen documents that he knew related to  
7 some of these other -- to some of  
8 these categories, and he had already  
9 seen them in the past.

10 BY MR. PLACITELLA:

11 Q. But the answers he signed said  
12 that he provided the information, didn't  
13 they?

14 MR. FARRELL: Objection to form,  
15 foundation, misstates Mr. Carter's  
16 verification.

17 THE WITNESS: Yeah, he didn't say  
18 he provided them. He said he had  
19 participated. So to him participating  
20 may have been: Yes, I, I remember  
21 three cases ago I saw this answer and  
22 we looked at something and I'm  
23 comfortable with it because I've seen  
24 it before.

25 I don't know that.

1 BY MR. PLACITELLA:

2 Q. Well, that's total speculation on  
3 your part; correct?

4 MR. FARRELL: Objection to  
5 form --

6 BY MR. PLACITELLA:

7 Q. His testimony was that he  
8 verified these answers without looking at a  
9 single document or speaking to a single  
10 witness; correct?

11 MR. FARRELL: Objection to form,  
12 foundation, asked and answers,  
13 misstates Mr. Carter's testimony.

14 THE WITNESS: Again, once again,  
15 what he said was he participated in  
16 the gathering of records. That to me  
17 is a pretty broad statement that could  
18 mean a lot of things.

19 BY MR. PLACITELLA:

20 Q. As you sit here today, do you  
21 have any evidence that he ever looked at a  
22 single document or spoke to a single witness  
23 before he signed interrogatory answers on  
24 behalf of Engelhard?

25 MR. FARRELL: Objection to form,

1 foundation.

2 THE WITNESS: I haven't talked to  
3 him. I don't know if that's in his  
4 testimony. There were a lot of cases,  
5 a lot of documents. The  
6 interrogatories may have been  
7 different from case to case. I just  
8 don't know that he did or didn't.

9 BY MR. PLACITELLA:

10 Q. Well, the same thing happened  
11 with the certifications; right? He signed  
12 them without looking at anything either --

13 MR. FARRELL: Objection --

14 BY MR. PLACITELLA:

15 Q. -- under oath and under penalty  
16 of perjury; right?

17 MR. FARRELL: Objection to form,  
18 foundation, misstates the  
19 certifications, argumentative.

20 MR. BOISE: Misstates his  
21 testimony.

22 BY MR. PLACITELLA:

23 Q. Okay.

24 A. I guess I don't know. I guess --  
25 you know, I've seen even in this case, you

1 know, some of the documents signed by  
2 plaintiffs in this case were inconsistent  
3 with their testimony. And, for example,  
4 Kimberlee Williams --

5 Q. Sir, what's my question? Did I  
6 ask you anything about Kimberlee Williams?

7 MR. FARRELL: Excuse me.

8 Mr. Placitella, he's responding to  
9 your question.

10 MR. PLACITELLA: No, he's not.

11 BY MR. PLACITELLA:

12 Q. What was my question, sir?

13 MR. FARRELL: Sir, the witness  
14 has the opportunity --

15 MR. PLACITELLA: When you're  
16 done, I'm going to ask my question.  
17 So keep going.

18 MR. FARRELL: Go ahead,  
19 Mr. Steinmetz.

20 BY MR. PLACITELLA:

21 Q. Go ahead.

22 A. So all I'm saying, the only  
23 reason I bring that up is because these  
24 kinds of things, I think, happen when you're  
25 writing documents. People look at this

1 information, maybe -- again, you're right,  
2 this may be speculation. But I know when I  
3 look at these documents, I see a question  
4 and I've answered it before, I've certified  
5 it before, I don't see a need to go back and  
6 ask for the document again from counsel. I  
7 sign it because I know I've seen it.

8 BY MR. PLACITELLA:

9 Q. Okay. Well, you answered  
10 interrogatories in this case, twice;  
11 correct?

12 A. I believe twice, yes.

13 Q. Did you look at any documents  
14 before you signed the interrogatory answers?

15 MR. FARRELL: Objection to form,  
16 foundation.

17 THE WITNESS: Honestly, I don't  
18 remember. I may have, but I don't  
19 remember. I, I --

20 BY MR. PLACITELLA:

21 Q. Well, shouldn't you have?

22 MR. FARRELL: Objection to form,  
23 foundation, beyond the scope of the  
24 notice.

25 THE WITNESS: If it's something

1           that I hadn't seen before, possibly.

2           If it's something where I don't think  
3           a document is necessary to certify it,  
4           no.

5       BY MR. PLACITELLA:

6           Q.    Okay.  So when you answered  
7           interrogatories in this case, did you speak  
8           to any witnesses before you certified them  
9           as true and accurate?

10           MR. FARRELL:  Objection to form,  
11           foundation, asked and answered, beyond  
12           the scope of the notice.

13           MR. PLACITELLA:  Oh, no.  It's  
14           not been asked and answered.

15           MR. FARRELL:  It has been asked  
16           and answered.

17           MR. PLACITELLA:  No, it hasn't.

18           MR. FARRELL:  You spent the first  
19           hour --

20           MR. PLACITELLA:  No.

21           MR. FARRELL:  -- of this  
22           deposition on what he did in verifying  
23           interrogatories in this response.  And  
24           it's beyond the scope of the notice.

25       BY MR. PLACITELLA:

1 Q. Sir, you certified  
2 interrogatories in this case. Did you speak  
3 to any witnesses?

4 MR. FARRELL: Objection to form,  
5 foundation, beyond the scope of the  
6 notice, asked and answered.

7 BY MR. PLACITELLA:

8 Q. Well, let me ask you the question  
9 this way: Are you any different than  
10 Mr. Carter?

11 MR. FARRELL: Objection to form,  
12 foundation, beyond the scope of the  
13 notice, argumentative.

14 BY MR. PLACITELLA:

15 Q. Did you review any documents  
16 before you certified the interrogatories in  
17 this case?

18 MR. FARRELL: Same objections.

19 THE WITNESS: In this case, no.

20 BY MR. PLACITELLA:

21 Q. Okay. So all the information you  
22 got when you verified the interrogatories  
23 came from the lawyers; correct?

24 MR. FARRELL: Objection to form,  
25 foundation.

1                   THE WITNESS: Again, they were  
2                   prepared by lawyers, by our counsel.  
3                   A lot of the interrogatories I've seen  
4                   before. I have seen records  
5                   associated with it or related to those  
6                   questions, so I feel comfortable, very  
7                   comfortable in signing documents. If  
8                   I have any questions, I call them and  
9                   ask them about it.

10       BY MR. PLACITELLA:

11               Q.    Okay. We'll get to that later.  
12                    Your answers to interrogatories  
13                   in these cases, you referenced the  
14                   affidavits signed by Charles Carter;  
15                   correct?

16                   MR. FARRELL: Objection to form,  
17                   beyond the scope of the notice.

18                   THE WITNESS: Interrogatory 12,  
19                   for example, there was a question  
20                   relating to -- what was the  
21                   question -- to the development,  
22                   drafting, revising, dissemination of  
23                   affidavits. Yes, so there was, there  
24                   were answers related to Charles  
25                   Carter.

1 BY MR. PLACITELLA:

2 Q. Okay. And you stated what?

3 A. I can read it for you.

4 Q. Go ahead.

5 MR. FARRELL: Objection to form.

6 Go ahead.

7 BY MR. PLACITELLA:

8 Q. Let me -- before this. Part of  
9 the factual basis for assertions in some of  
10 these letters that are involved in this case  
11 were from the Carter affidavits; correct?

12 MR. FARRELL: Objection to form,  
13 foundation --

14 BY MR. PLACITELLA:

15 Q. You put that in interrogatory  
16 answers?

17 MR. FARRELL: Objection to form,  
18 foundation, misstates the  
19 interrogatory answers.

20 THE WITNESS: So, I'm sorry, your  
21 question is?

22 BY MR. PLACITELLA:

23 Q. Part of the factual basis for  
24 many of the statements in letters that were  
25 written on behalf of Engelhard arose from

1 affidavits signed by Charles Carter;  
2 correct?

3 MR. FARRELL: Objection to form,  
4 foundation.

5 THE WITNESS: I'm sorry. I  
6 forgot the first part again. I know  
7 that Charles Carter did sign and  
8 verify several documents.

9 BY MR. PLACITELLA:

10 Q. Fair enough.

11 A. I just don't remember the whole  
12 question.

13 Q. Now, you answered and you --  
14 what's that, interrogatory what? number  
15 what?

16 A. Number 12.

17 Q. And you state what?

18 A. That Cahill attorneys -- there's  
19 an introduction to the sentence in there, or  
20 to the paragraph. And it says [reading]:  
21 That Cahill attorneys, including Peter  
22 Sloane and Ira Dembrow, drafted, revised,  
23 and worked with Charles Carter to finalize  
24 and sign affidavits regarding Emtal talc and  
25 the Johnson talc mine.

1 Q. Okay. Where did that information  
2 come from?

3 MR. FARRELL: Objection to form,  
4 beyond the scope of the notice.

5 THE WITNESS: Again, I didn't  
6 prepare for answering this type of  
7 question. But this was prepared by  
8 counsel.

9 BY MR. PLACITELLA:

10 Q. Well, where did that information  
11 come from?

12 MR. FARRELL: Objection to form,  
13 foundation, beyond the scope of the  
14 notice, asked and answered.

15 THE WITNESS: I presume from  
16 Charles Carter's testimony. I don't  
17 know specifically.

18 BY MR. PLACITELLA:

19 Q. Well, what did you do to verify  
20 that that information that you just provided  
21 that you swore to was true and accurate to  
22 the best of your knowledge?

23 MR. FARRELL: Objection to form,  
24 foundation, beyond the scope of the  
25 notice, asked and answered.

1 THE WITNESS: At the time I  
2 signed this and now, I'm very  
3 comfortable that it was accurate. So  
4 I didn't see a need to do that.

5 BY MR. PLACITELLA:

6 Q. You're very comfortable it's  
7 accurate, but you did nothing independently  
8 to determine whether that was true or not;  
9 fair?

10 MR. FARRELL: Objection to form,  
11 foundation, beyond the scope, asked  
12 and answered, misstates  
13 Mr. Steinmetz's testimony.

14 THE WITNESS: I saw no need to do  
15 it.

16 BY MR. PLACITELLA:

17 Q. The total basis for your signing  
18 that interrogatory was information provided  
19 by counsel; correct?

20 MR. FARRELL: Object -- same  
21 objections.

22 THE WITNESS: I -- the basis --  
23 it came from counsel. But counsel  
24 used something as the basis, and it  
25 would have been his testimony or other

1 things. I'm not sure of what it was,  
2 but I'm very comfortable with it.

3 BY MR. PLACITELLA:

4 Q. Well, you're comfortable. But  
5 you made no independent investigation. You  
6 didn't look at a single document and you  
7 never spoke to Mr. Carter. You never read  
8 anything to verify that that information is  
9 correct when you signed the certification  
10 saying that it was.

11 MR. FARRELL: Objection to form,  
12 foundation, beyond the scope of the  
13 notice, misstates the witness'  
14 testimony.

15 THE WITNESS: The fact that I was  
16 comfortable with it was the reason I  
17 didn't do those other things.

18 BY MR. PLACITELLA:

19 Q. Because your lawyers told you  
20 that's what it was?

21 MR. FARRELL: Same objections.

22 THE WITNESS: Because I'm very  
23 comfortable with the work that they  
24 do.

25 BY MR. PLACITELLA:

1 Q. That's fine. So you're really no  
2 different than Mr. Carter?

3 MR. FARRELL: Objection to form,  
4 argumentative.

5 THE WITNESS: I don't know  
6 Mr. Carter, so I don't know what he's  
7 like, so I don't know how different I  
8 am.

9 BY MR. PLACITELLA:

10 Q. Well, he didn't look at the  
11 information either. He just took the  
12 lawyers' word for it. So you're just like  
13 him; right?

14 MR. FARRELL: Objection to form,  
15 argumentative.

16 THE WITNESS: As I mentioned, I,  
17 I've done this in my way. If I need  
18 information, I go to counsel. I've  
19 looked at a lot of records over the  
20 last three years now. And if I'm  
21 comfortable, I don't need to ask them.

22 BY MR. PLACITELLA:

23 Q. Okay. So you indicate that --  
24 sorry -- Dornbusch and Fliegel were directly  
25 involved in the Carter affidavits; correct?

1 MR. FARRELL: Objection to form,  
2 foundation, misstates the record.

3 THE WITNESS: It didn't say  
4 directly. It says Arthur Dornbusch  
5 and Lester Fliegel were at times  
6 involved in facilitating  
7 communications. I don't know the  
8 depth of that.

9 BY MR. PLACITELLA:

10 Q. Okay. Certainly they knew what  
11 was going on with Carter --

12 MR. FARRELL: Objection --

13 BY MR. PLACITELLA:

14 Q. -- and the affidavits?

15 MR. FARRELL: Objection to form,  
16 foundation, beyond the scope of the  
17 notice.

18 THE WITNESS: From my  
19 recollection of Dornbusch's testimony,  
20 I, I wouldn't say that that's a given.  
21 I'm not sure that he did remember or  
22 remember being that involved at that  
23 point in time.

24 BY MR. PLACITELLA:

25 Q. So why didn't you put it in the

1 answers to interrogatories?

2 MR. FARRELL: Objection to form,  
3 argumentative, beyond the scope of the  
4 notice.

5 THE WITNESS: I, I guess because  
6 it wasn't asked.

7 BY MR. PLACITELLA:

8 Q. Okay. I'm going to show you  
9 what's been marked as Exhibit 6.

10 (A document previously marked as  
11 Exhibit 6 was introduced.)

12 BY MR. PLACITELLA:

13 Q. This is an affidavit by Charles  
14 Carter. You've seen this before; correct?

15 A. I've seen an affidavit. It may  
16 have been this one. It probably was, but I  
17 wouldn't swear to it. But, yes, I probably  
18 have seen it.

19 Q. I think I saw interrogatories  
20 where you reference this specifically.

21 So Mr. Carter states in 4 and 5  
22 [reading]: I know the foregoing from my own  
23 personal knowledge and from a search of  
24 corporate records. And if called as a  
25 witness, I could and would competently

1     testify thereto under oath.

2                     I declare under penalty of  
3     perjury under the laws of the State of New  
4     Jersey the foregoing is true and correct.

5                     Do you see that?

6             A.     Yes.

7             Q.     That's pretty serious, right --

8                     MR. FARRELL:   Objection --

9     BY MR. PLACITELLA:

10            Q.     -- penalty of perjury?

11                    MR. FARRELL:   Objection to form,  
12                    foundation, argumentative.

13                    THE WITNESS:   It does say penalty  
14                    of perjury.

15     BY MR. PLACITELLA:

16            Q.     And the paragraph before, Carter  
17     states [reading]:   As previously indicated  
18     in the affidavit of Charles Carter sworn and  
19     subscribed June 19, 1989, Engelhard does not  
20     currently possess any samples of the talc  
21     produced by this mine.

22                    Do you see that?

23             A.     Yes.

24             Q.     And then he goes on to say  
25     [reading]:   In addition, Engelhard does not

1 currently possess any testing data other  
2 than the data provided to you by way of the  
3 Ashton affidavit and the report of  
4 Dr. Cooley -- Pooley.

5 Did I read that correctly?

6 A. Yes.

7 Q. Okay. Now, can you go back to  
8 Steinmetz 4, please.

9 A. Okay.

10 Q. Okay.

11 MR. FARRELL: Which one is that  
12 one?

13 MR. PLACITELLA: That's the  
14 Carter deposition.

15 MR. FARRELL: Oh, the one that --  
16 you didn't have a copy of that; right?

17 MR. PLACITELLA: Right. Take  
18 your time. I'll tell you what page it  
19 is. And you can look at it before I  
20 ask him any questions if you want.  
21 I'm going to start on page 89.

22 Let me know when you're ready.

23 MR. FARRELL: Go ahead.

24 THE WITNESS: Oh, I'm ready.

25 MR. FARRELL: Sorry. I thought

1           you were waiting for the witness.

2           MR. PLACITELLA: I am.

3 BY MR. PLACITELLA:

4           Q. So page 89, Mr. Carter's asked  
5 about this affidavit. Do you see that? It  
6 starts --

7           A. Yes. I'm presuming it's this  
8 affidavit.

9           MR. BOISE: Which affidavit,  
10 Chris?

11           MR. PLACITELLA: The -- number 6.

12 BY MR. PLACITELLA:

13           Q. [Reading]:  
14 You indicate Engelhard does not  
15 currently possess any testing data.

16           Answer: That's correct.

17           What's the source of that -- what  
18 is the source of that information?

19           Counsel.

20           Answer -- question: Not  
21 yourself?

22           Answer: Not myself.

23           Question: That's not something  
24 you had personal knowledge of?

25           Answer: That's correct.

1           You relied on counsel who told  
2           you that there was no testing data  
3           available; correct?

4           Objection -- Mr. Farrell and  
5           Mr. Boise this time.

6           Answer: I relied on counsel  
7           to -- I don't know how to say it -- I  
8           had, you know, I had no reason to  
9           challenge them.

10          Do you see that?

11          A. Yes. The only thing I --

12          Q. Okay.

13          A. -- comment on is that you say  
14          they don't possess any current testing data.  
15          And what the affidavit says is it doesn't  
16          contain any other data other than that data  
17          provided to you by way of Ashton and report  
18          of Dr Pooley.

19          Q. No problem.

20                 Then he goes on to say [reading]:

21                 Was it the inside and outside  
22          lawyer --

23                 When I asked him what counsel, he  
24          says: I have no recollection.

25                 I said: Was it the inside and

1 outside lawyers, both?

2 He says: I'm not sure. Like I  
3 say, most of this my belief is that  
4 was transpiring was inside and outside  
5 counsel had the request and they took  
6 care of it. Who did what part of  
7 what, together they worked through the  
8 process.

9 And when it was presented to me,  
10 it was a consensus of inside and  
11 outside counsel. I had no, no --  
12 specifically can't say to you, to you  
13 this was Cahill, this was Dornbusch's  
14 staff, because to me it was all  
15 interwoven.

16 Question: But they asked you to  
17 sign this?

18 Answer: Yes.

19 To help them defend cases?

20 Objection.

21 Answer: They asked me to sign  
22 them for whatever legal purposes they  
23 had for it.

24 Do you see that?

25 A. Yes.

1 Q. So according to Mr. Carter's  
2 deposition, he signed this affidavit under  
3 oath without ever looking at anything;  
4 correct?

5 MR. FARRELL: Objection to form,  
6 foundation, misstates Mr. Carter's  
7 testimony.

8 BY MR. PLACITELLA:

9 Q. He never, he never did an  
10 investigation to see if there was testing  
11 data available; correct?

12 MR. FARRELL: Objection to form,  
13 foundation, misstates Mr. Carter's  
14 testimony.

15 THE WITNESS: I think what he  
16 says here speaks for itself. I can't  
17 speak for him.

18 BY MR. PLACITELLA:

19 Q. So based upon your interrogatory  
20 answer that says Mr. Dornbusch and  
21 Mr. Fliegel were involved in drafting the  
22 affidavits, they allowed Mr. Carter to sign  
23 an affidavit telling lawyers there was no  
24 testing data, knowing full well that he  
25 never looked at a single piece of paper

1 before he signed that affidavit; correct?

2 MR. FARRELL: Objection to form,  
3 foundation, misstates the affidavit.

4 THE WITNESS: Two things: I  
5 don't know if they approved this  
6 personally. The second thing I would  
7 say is, whether they did or not, it's  
8 absolutely true that everybody at that  
9 time believed there was no testing  
10 data anymore because it had been  
11 discarded.

12 BY MR. PLACITELLA:

13 Q. Oh, so you think that's the  
14 justification; you got rid of it, so now you  
15 can say you didn't have it?

16 MR. FARRELL: Object -- objection  
17 to form, argumentative.

18 THE WITNESS: I'm not saying it's  
19 justification. I'm just saying it's a  
20 fact that Mr. Carter has testified,  
21 the people -- the person from Cahill  
22 and the people from Engelhard all  
23 testified in the depositions that they  
24 had not seen any of the data from  
25 Westfall. They didn't know it

1           existed.

2       BY MR. PLACITELLA:

3           Q.    Except it was in Mr. Dornbusch's  
4       file, wasn't it?

5           MR. FARRELL:  Objection to form,  
6       foundation, misstates the record.

7           THE WITNESS:  I think --

8       BY MR. PLACITELLA:

9           Q.    Wasn't it?

10          A.    I think Mr. Dornbusch's testimony  
11       was that it was sent back to him.  At some  
12       point it ended up in the files.  He didn't,  
13       he didn't have a good chain-of-custody  
14       record for it.  As far as he was concerned,  
15       from my reading of his testimony, it ended  
16       up in a file somewhere.  And we know that it  
17       ended up, that it ended up ultimately  
18       off-site in some file and that he had no  
19       recollection of it existing.

20          Q.    So you think this was okay, that  
21       you get rid of the documents that you know  
22       once existed and then you have somebody who  
23       knows nothing sign an affidavit saying that  
24       there was no testing data to mislead people  
25       into believing that there was no testing

1 data to analyze? You think that was okay?

2 MR. FARRELL: Objection to form,  
3 foundation, argumentative, misstates  
4 Mr. Carter's affidavit.

5 THE WITNESS: I guess I'm not  
6 sure what you mean by "okay." But  
7 remember, in this affidavit there's --  
8 they are providing information from  
9 the, from the Ashton affidavit and  
10 from Dr. Pooley's report.

11 BY MR. PLACITELLA:

12 Q. I get that, sir. My question is:  
13 You think it was okay to ask Mr. Carter to  
14 sign this affidavit, knowing full well that  
15 the people who were involved were involved  
16 in the Westfall case, heard the scientists  
17 testify under oath that they found asbestos  
18 in the talc, and have him execute this  
19 affidavit? You think that was okay --

20 MR. FARRELL: Objection --

21 BY MR. PLACITELLA:

22 Q. -- of behalf of BASF?

23 MR. FARRELL: Objection to form,  
24 foundation, argumentative, misstates  
25 Mr. Carter's affidavit, misstates the

1 record.

2 THE WITNESS: Okay. I'm not sure  
3 what you mean by "okay." But there  
4 were so many things you said in there,  
5 I'd have to take it apart piece by  
6 piece and address each part of what  
7 you said. It's just there was so  
8 much, I can't even --

9 BY MR. PLACITELLA:

10 Q. Well, let me ask you a question.

11 A. -- comment on it.

12 Q. Do you think it was fair to  
13 provide this affidavit to lawyers and lead  
14 them to believe that there was no testing  
15 data under all the circumstances that we've  
16 gone through today? You think that was  
17 fair?

18 MR. FARRELL: Objection to form,  
19 foundation, misstates Mr. Carter's  
20 affidavit, misstates the record.

21 THE WITNESS: I'm sorry --

22 MR. BOISE: Argumentative.

23 THE WITNESS: And I'm sorry, who  
24 are you saying provided? You said  
25 it's unfair to provide. I'm not sure

1           what you mean by that.

2       BY MR. PLACITELLA:

3           Q.     It was unfair for Engelhard to  
4     give this affidavit to other lawyers,  
5     implying that there was no evidence to test,  
6     when Engelhard knew that they had the  
7     evidence, they destroyed it, their own  
8     witnesses testified under oath with their  
9     hand on the Bible that they found  
10    asbestos -- you think this was a fair  
11    affidavit and the right thing to do on  
12    behalf of Engelhard and BASF?

13               MR. FARRELL:  Objection to form,  
14     foundation, misstates the record,  
15     misstates Mr. Carter's affidavit,  
16     argumentative.

17               THE WITNESS:  Again, there was so  
18     much in what you just said that I'd  
19     have to look at each part of it, and I  
20     could have comments on almost  
21     everything you said.

22               But my understanding is that --  
23     your first statement was that  
24     Engelhard provided this.  And my  
25     understanding is that affidavits were

1 developed by Cahill attorneys in  
2 conjunction with Carter. I don't know  
3 that there's any proof that anybody  
4 from, from BASF legal saw this. They  
5 may have. I don't know.

6 BY MR. PLACITELLA:

7 Q. Okay.

8 A. But it was prepared by Cahill,  
9 generally.

10 Q. Okay. Can you -- I'm going to  
11 show you what's been marked as Steinmetz 5,  
12 which is an excerpt of the privilege logs in  
13 this case.

14 (Cahill Exhibit 5 was marked for  
15 identification.)

16 BY MR. PLACITELLA:

17 Q. By the way, was Cahill authorized  
18 to send this affidavit out?

19 MR. FARRELL: Objection to form  
20 and foundation.

21 THE WITNESS: I guess it's the  
22 same thing we've been talking about,  
23 you know, most of the morning and  
24 afternoon. And that is that Cahill  
25 was authorized to implement a strategy

1 of defense and to do it appropriately.

2 BY MR. PLACITELLA:

3 Q. And by your own interrogatory  
4 answer, Mr. Dornbusch and Mr. Fliegel had a  
5 hand in the certifications; right?

6 MR. FARRELL: Objection to form.

7 THE WITNESS: I'd have to look at  
8 that again. I thought it was  
9 Mr. Sloane and Mr. --

10 BY MR. PLACITELLA:

11 Q. Why don't you look at it again.

12 A. But I can check that.

13 Q. Yeah, why don't you look?

14 A. It says Peter Sloane and Ira  
15 Dembrow drafted, revised, and worked with  
16 Charles Carter.

17 Q. There's no mention in there  
18 about --

19 A. It says that Arthur Dornbusch and  
20 Lester Fliegel were at times involved in  
21 facilitating Cahill's communications. It  
22 didn't say with respect to the affidavits  
23 and because -- keep in mind that this  
24 interrogatory is really broad in scope and  
25 it's talking about all kinds of information.

1 Q. Do you have any information as  
2 you sit here today, any proof that  
3 Mr. Dornbusch and Mr. Fliegel were not aware  
4 that this affidavit was executed and signed  
5 and sent out?

6 MR. FARRELL: Objection to  
7 form --

8 BY MR. PLACITELLA:

9 Q. Do you have any evidence?

10 MR. FARRELL: Are you finished?

11 MR. PLACITELLA: Yes.

12 MR. FARRELL: Objection to form  
13 and foundation.

14 THE WITNESS: I have absolutely  
15 no evidence that they did see it. And  
16 based on Mr. Dornbusch's testimony,  
17 I'd be amazed if they did.

18 BY MR. PLACITELLA:

19 Q. Okay. Can you go to -- what was  
20 the date of this affidavit, by the way?

21 A. It was 1990, I believe, sometime.  
22 It was November 7, 1990.

23 Q. I'm sorry. Could I have it?

24 MR. FARRELL: I think you're  
25 talking about two different

1           affidavits.

2                   MR. PLACITELLA: Yeah, that's  
3           what I want to make sure, we're on the  
4           same page.

5   BY MR. PLACITELLA:

6           Q.    It's August 18th, 1989, is it  
7           not, the --

8           A.    Oh, I'm sorry. Yes, you're  
9           right. That's the date on -- it's -- the  
10          notary public date is -- yes, I was looking  
11          at the notary public expiration date. Yes.

12          Q.    And do you have the document  
13          Steinmetz 5?

14          A.    I do.

15          Q.    And can you go to page 5, please.

16          A.    Yes.

17          Q.    You see the entry for 8/18/1989?

18          A.    Yes.

19          Q.    And that's the same exact day as  
20          that affidavit was executed; correct?

21          A.    Yes.

22          Q.    And it's from Charles Carter;  
23          correct? See that?

24          A.    I'd have to look at the first --  
25          yes.

1 Q. Okay. To Arthur Dornbusch; do  
2 you see that?

3 A. Yes.

4 Q. [Reading]: Letter trans- --  
5 letter and attachment transmitting signed C.  
6 Carter affidavit.

7 Do you see that?

8 A. Yes.

9 Q. Doesn't that contradict your  
10 statement, sir, that Mr. Dornbusch had no  
11 idea what was going on with the Carter  
12 affidavit, when it was sent to him by  
13 Mr. Carter on the same day it was executed?

14 MR. FARRELL: Objection to form,  
15 foundation, argumentative.

16 BY MR. PLACITELLA:

17 Q. How come every time I ask a  
18 question, you look at Mr. Farrell?

19 A. Because he --

20 MR. FARRELL: Because he's  
21 waiting for me to object to your  
22 objectionable questions.

23 MR. PLACITELLA: Okay.

24 THE WITNESS: That's the only  
25 reason --

1 MR. PLACITELLA: Okay.

2 THE WITNESS: -- because I know  
3 that there are objections quite often.

4 BY MR. PLACITELLA:

5 Q. Does this, does this reflect --  
6 I'll withdraw my last question.

7 Does this reflect that on the  
8 exact date that the affidavit was signed,  
9 Charles Carter sent a signed affidavit to  
10 Arthur Dornbusch?

11 MR. FARRELL: Objection to form.

12 THE WITNESS: This is one line.  
13 I've never seen this document. I have  
14 no idea what's in the document. I see  
15 one line that gives a date. You're  
16 correct; it's the same date. It's  
17 from Charles Carter, according to the  
18 heading. And the recipients include  
19 LaTorre and Dornbusch.

20 BY MR. PLACITELLA:

21 Q. Who LaTorre?

22 A. I don't know. But I have no  
23 idea -- and it says letter and attachment  
24 transmitting signed affidavit. That's all I  
25 can say. I have no idea what's in that

1 letter. I've never seen it. And I don't  
2 know that Dornbusch ever saw that  
3 attachment.

4 Q. Okay. So you think that --

5 A. In fact, it may be that he sent  
6 it to LaTorre and Dornbusch just got a copy  
7 of the cover letter. I don't know.

8 Q. You think that's a coincidence?

9 MR. FARRELL: Objection to form.

10 BY MR. PLACITELLA:

11 Q. You think that's a coincidence,  
12 on the exact day he signed the affidavit  
13 it's a privilege log for the exact date  
14 being -- and it says Carter affidavit was  
15 sent to Mr. Dornbusch, who you put in the  
16 interrogatory answers, were involved with  
17 the affidavit? You think that's a  
18 coincidence?

19 MR. FARRELL: Objection to form,  
20 foundation, argumentative.

21 THE WITNESS: I'm just trying to  
22 answer without speculating. I just  
23 don't know.

24 BY MR. PLACITELLA:

25 Q. Okay. We'll let the jury decide.

1                   Topic number 1, I want to talk to  
2   you about, are reasons for dismissal. You  
3   with me?

4           A.    Yes.

5                   (A document previously marked as  
6   Exhibit 221 was introduced.)

7   BY MR. PLACITELLA:

8           Q.    Okay. And Exhibit 221 are  
9   answers to interrogatories submitted in this  
10   case certified by you; correct?

11          A.    Yes.

12                  MR. FARRELL: Objection to form.

13   BY MR. PLACITELLA:

14          Q.    Okay. Interrogatory number 1  
15   asks you to identify all the settlements  
16   entered into -- do you see that part? I'll  
17   put it up here. And I'm paraphrasing.

18          A.    I do, yes.

19          Q.    Okay. And it asks for a lot of  
20   information concerning these settlements,  
21   correct -- how much, the reason for  
22   dismissal, et cetera?

23          A.    That's correct.

24          Q.    Okay. And you begin your answer  
25   by saying -- after you make objections --

1     that you refer the plaintiffs to a database  
2     produced at -- and then it gives a number,  
3     and the final number ends in a 3.  It's FRE  
4     48, a whole bunch of zeros -- 408, a whole  
5     bunch of zeros, then 3.  Do you see that?

6             A.     I do.

7             Q.     Okay.  And where did you get that  
8     information?

9                    MR. FARRELL:  Objection to form.

10                   THE WITNESS:  I'm sorry.  What  
11     information?  And what did you mean by  
12     "you"?  Do you mean --

13     BY MR. PLACITELLA:

14             Q.     You, when you verified these  
15     interrogatories and you said in response to  
16     settlement information and A through O, you  
17     refer the plaintiffs to the database  
18     produced for information that's responsive  
19     to the interrogatories; right?

20             A.     Correct.

21             Q.     Okay.  So where did you get that?

22             A.     So --

23                    MR. FARRELL:  Objection to form.

24                    THE WITNESS:  So once again,  
25     this -- these interrogatories were

1           drafted by counsel and sent to me. So  
2           they would have come from counsel.

3 BY MR. PLACITELLA:

4           Q. So before you signed them, did  
5 you do anything to verify the information  
6 that was in there? Did you look at the  
7 database before you signed them?

8           MR. FARRELL: Objection to form  
9 and foundation, beyond the scope of  
10 the notice.

11           THE WITNESS: No. I was  
12 comfortable it was accurate.

13 BY MR. PLACITELLA:

14           Q. Well, did you look to see if it  
15 was accurate?

16           MR. FARRELL: Same objections,  
17 beyond the scope of the notice.

18           THE WITNESS: No, I was  
19 comfortable that it was accurate.

20 BY MR. PLACITELLA:

21           Q. So you relied totally on  
22 counsel's representation to you as to what  
23 was in the database when you signed it under  
24 oath that it was responsive to this  
25 question?

1 MR. FARRELL: Objection to form,  
2 foundation, argumentative, beyond the  
3 scope of the notice, asked and  
4 answered.

5 THE WITNESS: I was comfortable  
6 that counsel had responded in an  
7 appropriate way and that it was giving  
8 you the information that they had to  
9 give you.

10 BY MR. PLACITELLA:

11 Q. Topic number one today [reading]:  
12 The reasons recorded, written, or  
13 represented as to why claims or lawsuits  
14 alleging injury to -- due to exposure to  
15 Emtal talc were settled, dropped, dismissed,  
16 and the amounts paid to settle each of such  
17 cases.

18 Do you see that?

19 A. I'm sorry. I'm not sure where we  
20 are.

21 Q. Topic number 1 in the notice, the  
22 notice for today's deposition.

23 A. Oh, I'm sorry, for today's --  
24 yes, okay.

25 Q. Yes. So I'm --

1 A. Yes, I'm there. Yep.

2 Q. Okay. And interrogatory  
3 number 1, for 221, asks a lot of the same  
4 information; correct?

5 MR. FARRELL: Objection to form,  
6 misstates the interrogatory and the  
7 designated issue.

8 THE WITNESS: They're both very  
9 broadly written, as I mentioned  
10 before, encompassing thousands of  
11 lawsuits. There are -- there's more  
12 detail in interrogatory 1. And I, I  
13 don't know if your characterization is  
14 completely accurate.

15 They ask for the same types of  
16 questions -- information on apparently  
17 all lawsuits, which, as I mentioned  
18 before, could be hundreds or  
19 thousands.

20 BY MR. PLACITELLA:

21 Q. I got no problem with that. I'm  
22 just trying to get on the same page with  
23 you.

24 And in response you referred us  
25 to a database; correct?

1 MR. FARRELL: Objection to form.

2 BY MR. PLACITELLA:

3 Q. What's in that database that's  
4 responsive to that question?

5 MR. FARRELL: Objection to form,  
6 foundation, beyond the scope of the  
7 deposition notice.

8 MR. PLACITELLA: I don't think it  
9 is.

10 MR. FARRELL: I'm sorry. Which  
11 designated issue --

12 MR. PLACITELLA: Topic number 1.

13 MR. FARRELL: No. You're asking  
14 a question about BASF's responses to  
15 interrogatories that were served  
16 months ago and the basis for those  
17 responses. Which topic covers BASF's  
18 responses to interrogatories?

19 MR. PLACITELLA: Well, I'm not  
20 going to fight with you over it. It's  
21 covered by 1. That's my position.  
22 We'll let the Judge decide; okay?

23 MR. FARRELL: My objection has  
24 been noted: form, foundation, beyond  
25 the scope of the notice.

1 MR. PLACITELLA: Okay.

2 BY MR. PLACITELLA:

3 Q. What's in the database that's  
4 responsive to interrogatory number 1 --

5 MR. FARRELL: Same objections.

6 BY MR. PLACITELLA:

7 Q. -- since you verified them as  
8 true?

9 A. Well, I -- when we verify these,  
10 we don't say that everything in here is what  
11 you want and that it all exists. In fact,  
12 we know it doesn't exist because there are  
13 so many lawsuits, they're all so different,  
14 they're in so many places.

15 Q. So --

16 A. There's just no way to answer  
17 every question about every lawsuit without  
18 going to each one and digging into it.

19 Furthermore, some of these  
20 questions ask for information on why  
21 something was settled or resolved, and we  
22 can't know because that's really in the head  
23 of the plaintiffs' attorneys. So there's  
24 some things we can answer in here.

25 The answer to interrogatory 1

1 was: This is a database we have. It's  
2 responsive -- we didn't say it gave the  
3 answer and every answer that you needed  
4 that's responsive to the interrogatories.

5 Q. That wasn't my question. My  
6 question is: What's in the database that's  
7 responsive?

8 A. I --

9 Q. What's in the database?

10 MR. FARRELL: Objection to form.

11 THE WITNESS: As I mentioned, I  
12 saw it briefly. I'd have to look at  
13 it again in detail and see -- you  
14 know, and match up specifically what  
15 goes to where. But there is  
16 information on the individual -- on  
17 many of the individual cases that  
18 Cahill litigated for Engelhard.

19 And among the, among the things  
20 that are included in that database  
21 include names of plaintiffs, names  
22 of -- types of -- information on the  
23 complaints, some information on  
24 settlement, some information on  
25 chemicals or products involved.

1                   So there's various types of  
2                   information in there. There's several  
3                   tables. I just don't have them all  
4                   memorized.

5       BY MR. PLACITELLA:

6               Q.    Well, can you look at the  
7                   database and look for a person's name and  
8                   see what his injury was and what happened to  
9                   his case?

10                  MR. FARRELL:  Objection to form.

11                  THE WITNESS:  I don't know  
12                   whether specific information on the  
13                   Cahill attorney is in there. I -- it  
14                   might be. I just don't know.

15       BY MR. PLACITELLA:

16               Q.    What do you mean "Cahill  
17                   attorney"?

18               A.    Well, you said would you be able  
19                   to look for something and his case and find  
20                   it.

21               Q.    Well, my question is: Can I go  
22                   to the database -- well, I'll ask it -- can  
23                   I get a list in the database from -- of all  
24                   the people in the database, what their  
25                   injury were, and what happened to their

1 case? Can you generate that list?

2 MR. FARRELL: Objection to form,  
3 foundation.

4 THE WITNESS: I guess I -- my  
5 understanding is you have the database  
6 and you could try to do those things  
7 yourself.

8 I also understand that our  
9 counsel has offered to do searches for  
10 you if you, if you can't get that  
11 information out. I don't know if  
12 everything you want is in there or  
13 not.

14 BY MR. PLACITELLA:

15 Q. That wasn't my question. My  
16 question is: In the database can you  
17 generate the claimant's name, the injury  
18 they alleged, and what happened to the case?

19 MR. FARRELL: Objection to form,  
20 asked and answered.

21 THE WITNESS: I guess it all  
22 depends on what you mean by "what  
23 happened" and "the injury they  
24 claimed." But that type of  
25 information is in there.

1           It's not necessarily in there for  
2           all cases because, as was, as was  
3           detailed by Sullivan in his  
4           deposition, the database was  
5           incomplete. It wasn't meant to  
6           collect data from every single  
7           litigation case that was conducted by  
8           Cahill. There may have been some  
9           Emtal cases that aren't in there.  
10          There may have been some other cases  
11          that weren't Emtal.

12                 So some of that information can  
13           be provided in a report from the  
14           database. I don't know Access that  
15           well. Some of it can be provided, but  
16           I don't know that everything you want  
17           here can be.

18   BY MR. PLACITELLA:

19           Q.    Okay. So let me narrow it down a  
20           little bit.

21                 Accepting your representation  
22           that not every plaintiff is in there --  
23           okay? We're on the same page?

24           A.    That's my understanding, yes.

25           Q.    Okay. For the people who are in

1 the database, can you generate a report that  
2 indicates the plaintiff's name, the injury  
3 they alleged, and whatever information you  
4 have on what happened to the case?

5 MR. FARRELL: Object --

6 BY MR. PLACITELLA:

7 Q. Whether it was settled?  
8 dismissed? settled and dismissed? Can you  
9 do that?

10 MR. FARRELL: Objection to form.

11 THE WITNESS: As I mentioned  
12 earlier, in some cases. But when the  
13 database was developed -- remember, it  
14 wasn't developed for purposes of what  
15 we're looking at today. It was  
16 developed for other purposes within  
17 Cahill 20 years ago or whenever it was  
18 done.

19 And so in some cases some of the  
20 information is there; in other cases  
21 it's not. What information was put in  
22 was at the discretion of the attorney  
23 who was handling that case. So if the  
24 attorney thought information on the  
25 settlement was important, it might

1           have been put into a table or not --  
2           to multiple tables. If that attorney  
3           didn't think it was important, then it  
4           wouldn't have been.

5                     So it may, it may have  
6           information for some but not for all.

7 BY MR. PLACITELLA:

8           Q.    Okay. I'm really trying to be a  
9           lot more simple than that. So maybe I'll  
10          get even more simple.

11                    Are you able to generate a report  
12          that shows the client or the claimant's name  
13          and the injury -- whoever is in there -- and  
14          the injury they alleged, whatever is in  
15          there? Can you link them up? Can you match  
16          them?

17          A.    Again, I'm not an expert in  
18          Access. I believe you can do that.

19          Q.    Okay.

20          A.    But like I said, not all the  
21          tables are populated for all of the  
22          reference numbers.

23          Q.    Okay. So -- do you have -- still  
24          have 131 in front of you?

25          A.    Yes.

1 Q. Okay.

2 MR. FARRELL: I'm sorry. Which  
3 one is that? Is that the letter?

4 MR. PLACITELLA: Yeah.

5 MR. BOISE: Chris, can I see  
6 the second page real quick?

7 MR. PLACITELLA: Uh-huh.

8 MR. BOISE: Okay. Thank you.

9 BY MR. PLACITELLA:

10 Q. In the first paragraph Engelhard  
11 states [reading]: Simply, the basis for  
12 this request is the same reason that you and  
13 Mr. Economus had dismissed certain other  
14 plaintiffs' actions against Emtal; namely,  
15 the action is an asbestos case and there is  
16 no evidence whatsoever that the talc mined  
17 and milled by Emtal contained asbestos. I  
18 enclose for your reference copies of your  
19 correspondence regarding such actions, the  
20 Brown, Compton, Gonzales, James, and  
21 Williams cases, and the dismissals in those  
22 cases.

23 Do you see that?

24 A. I do see it.

25 Q. Do you have any reason to

1 disbelieve the information that was  
2 transmitted about the reasons for dismissal  
3 in this letter?

4 MR. FARRELL: Objection to form,  
5 foundation, misstates the letter.

6 THE WITNESS: I do have some  
7 basis; because in his testimony Joslyn  
8 was asked about this type of statement  
9 where the attorney writing the letter  
10 was advocating -- because that's what  
11 attorneys do -- and made references to  
12 settlements for one reason or another  
13 in trying to say that something was  
14 settled for that reason.

15 And what he said in essence was:  
16 If you really want to know why  
17 Brown -- he didn't say this  
18 specifically, but, you know, in  
19 essence, if you want to know why Brown  
20 or Compton on Gonzales or James and  
21 Williams were settled, you need to  
22 look at the case file, you need to  
23 talk the plaintiffs' attorneys, you  
24 need to look at all the details  
25 associated with it; because there's no

1 way of saying that every one of those  
2 was settled only on the basis of there  
3 being no asbestos in Emtal.

4 Q. Sir, your lawyer, as an officer  
5 of the court, made this representation. Did  
6 he not?

7 MR. FARRELL: Objection to form,  
8 foundation, argumentative.

9 THE WITNESS: I, I don't know  
10 what you mean by "as an officer of the  
11 court." I have no idea what that  
12 means from a legal perspective. I  
13 know that he wrote a letter. I know  
14 that lawyers write letters. They  
15 advocate. And they write things in  
16 letters because they want to effect an  
17 outcome. I just don't know what  
18 that --

19 BY MR. PLACITELLA:

20 Q. So he was telling stories to  
21 Mr. Bevan to try to get him to dismiss  
22 cases? Is that what you're saying?

23 MR. FARRELL: Objection to form.

24 BY MR. PLACITELLA:

25 Q. He was just advocating a

1       nontruth? Is that what you're saying?

2                   MR. FARRELL: Objection to form,  
3       foundation, argumentative, asked and  
4       answered.

5                   THE WITNESS: My feeling is he  
6       was advocating. I think you'd have to  
7       ask him, you know, what he meant when  
8       he wrote this. But I just see it as a  
9       letter referencing other settlements  
10      in -- and I know that Joslyn, in his  
11      testimony, stated that for these types  
12      of statements, the lawyers would have  
13      to look at the case files to make  
14      those kinds of calls.

15      BY MR. PLACITELLA:

16              Q. Do you have any proof as you sit  
17      here today that the information in the  
18      letter is untrue -- any independent proof  
19      based on your investigation?

20                   I don't want to know what  
21      Mr. Joslyn said. Do you have any  
22      information to indicate that what's said in  
23      this letter is not true?

24                   MR. FARRELL: Objection to form,  
25      foundation.

1           THE WITNESS: Again, in  
2           preparation for this, I haven't looked  
3           at the files or the information for  
4           these cases. What I do know -- unless  
5           it's the Williams case and -- that  
6           we're talking about here.

7           But I do know that in looking at  
8           so many cases over the last week that  
9           they're all so different, that it  
10          would be impossible to say that every  
11          case was settled because we made the  
12          claim that there was no asbestos in  
13          the Emtal. I know that they're all  
14          different.

15          Even the ones where we made that  
16          claim, there were other elements to  
17          the defense such as, as I mentioned  
18          before, product-ID issues, issues  
19          related to exposure, issues related to  
20          courts, court deadlines, medical  
21          fraud, all these other things that  
22          I've talked about before.

23          So do I have any proof that this  
24          isn't true? No. I -- just from  
25          looking at so many cases over the

1 course of the last week, I doubt that  
2 you could make a case like that --

3 BY MR. PLACITELLA:

4 Q. So are you --

5 A. -- without looking at the files.

6 Q. So are you saying we can't  
7 believe anything Cahill puts in letters?

8 MR. FARRELL: Objection to form,  
9 foundation, argumentative, misstates  
10 his testimony.

11 BY MR. PLACITELLA:

12 Q. Well, I'm trying to understand  
13 your testimony, sir.

14 MR. FARRELL: He's just --

15 BY MR. PLACITELLA:

16 Q. Are you saying we can't believe  
17 anything they put in letters?

18 A. No.

19 MR. FARRELL: Objection to form,  
20 foundation, argumentative, asked and  
21 answered.

22 THE WITNESS: No, not at all.  
23 It's like I said before, even the  
24 cases -- in this case, for the  
25 Williams case, there are inaccuracies;

1           there are claims made that people  
2           write when they're writing letters.  
3           I'm not saying that it's not true or  
4           that people are trying to mislead.  
5           It's just the way people write.

6                     I don't think at all that Cahill  
7           was lying.

8   BY MR. PLACITELLA:

9           Q.   Do you have an understanding of  
10          what a lawyer's obligation is as an officer  
11          of the court when they write letters making  
12          these kinds of assertions?

13          A.   I'm not a lawyer. So I don't  
14          know. Sorry.

15          Q.   Do you under- -- do you know what  
16          the consequences are to a lawyer who would  
17          make statements like this in a letter --

18                     MR. FARRELL: Objection to  
19          form --

20   BY MR. PLACITELLA:

21          Q.   -- if they were not true?

22                     MR. FARRELL: Objection to form,  
23          foundation, beyond the scope of the  
24          notice, calls for a legal conclusion.

25                     THE WITNESS: I'm not a lawyer.

1 And I don't know, and I don't know  
2 what was in this person's mind when he  
3 wrote it. So I really don't know.

4 MR. FARRELL: You okay to keep  
5 going or...?

6 THE WITNESS: I'm fine, yes.

7 (Discussion held off the  
8 stenographic record.)

9 (A document previously marked as  
10 Exhibit 129 was introduced.)

11 BY MR. PLACITELLA:

12 Q. Exhibit 129 is a letter from  
13 Mr. Sarner to a David Shroyer. Do you see  
14 that?

15 A. I do, yes.

16 Q. And it's June 6th, 1991. Do you  
17 see that?

18 A. Yes.

19 Q. And he talks about dismissals of  
20 lawsuits that Mr. Shroyer has filed;  
21 correct?

22 A. Yes.

23 Q. Okay. And he talks about the  
24 fact that he provided Mr. Shroyer with  
25 evidence to help convince him to dismiss

1 Engelhard from the case; correct?

2 MR. FARRELL: Objection to form.

3 I'm sorry, where are you -- are  
4 you referring to something in the  
5 letter?

6 MR. PLACITELLA: Just generally.  
7 I can read the whole thing. I'm  
8 trying to to move things along.

9 MR. FARRELL: Objection to form,  
10 misstates the letter.

11 THE WITNESS: I'm sorry. So your  
12 question was?

13 BY MR. PLACITELLA:

14 Q. Generally, he's talking about  
15 getting him to dismiss cases; correct?

16 MR. FARRELL: Objection to form,  
17 foundation, assumes facts.

18 THE WITNESS: I mean, I can read  
19 the letter. But what he's doing is  
20 he's sending additional information --  
21 it looks like they've been talking  
22 about this back and forth, from what I  
23 read into this, and that he's, that  
24 he's -- that at some point -- I don't  
25 know if it's with this letter or at

1 another time -- materials have been  
2 supplied to counsel as part of the  
3 process of settling the case.

4 BY MR. PLACITELLA:

5 Q. And that included the Ashton  
6 affidavit; correct?

7 A. He does refer to it, yes.

8 Q. All right. Which was like the  
9 central piece of this litigation strategy on  
10 the no-asbestos assertions; correct?

11 MR. FARRELL: Objection to form,  
12 foundation, misstates the record.

13 THE WITNESS: The Ashton  
14 affidavit was part of the analysis  
15 that Cahill performed to come to the  
16 conclusion about the question of  
17 whether there was asbestos in the  
18 talc. But that was, as we mentioned  
19 before, only part of their strategy.

20 BY MR. PLACITELLA:

21 Q. Okay. And he says [reading]: I  
22 trust that once you've had the opportunity  
23 to review these materials and the Ashton  
24 affidavit and supporting materials  
25 previously provided to you, your conclusion

1 will be the same as that reached by tire  
2 worker counsel in other jurisdictions who  
3 have dismissed Eastern Magnesia Talc  
4 Company.

5 Do you see that?

6 A. Yes, he does.

7 Q. And, of course, Engelhard was  
8 aware this letter was sent; right?

9 MR. FARRELL: Objection to form,  
10 foundation.

11 THE WITNESS: There are copies to  
12 Engelhard people on it; yes.

13 BY MR. PLACITELLA:

14 Q. Okay. And do you know what the  
15 factual basis was for the representation  
16 that dismissal was reached by tire worker  
17 counsel in other jurisdictions? Do you know  
18 what the factual basis for that was?

19 MR. FARRELL: Objection to form,  
20 foundation.

21 THE WITNESS: No, I guess that's  
22 the problem with this letter if that's  
23 what we're looking for; because all it  
24 says is that they wanted to reach the  
25 same conclusion, which is dismissal.

1           They're not saying why. They're  
2           not saying what other information  
3           was -- what other materials were  
4           provided besides the Ashton affidavit.  
5           They don't talk about what was  
6           supplied in the other cases.

7           So this doesn't tell me anything  
8           about the factual basis.

9       BY MR. PLACITELLA:

10          Q.   Well, do you know where they got  
11          the facts to make this statement?

12               MR. FARRELL:  Objection to  
13          form --

14       BY MR. PLACITELLA:

15          Q.   That's my question.

16               MR. FARRELL:  Objection to form  
17          and foundation.

18               THE WITNESS:  This is a  
19          three-paragraph letter written over 30  
20          years ago; no, I don't.

21       BY MR. PLACITELLA:

22          Q.   Well, it's -- okay. Did you ever  
23          see anything in the files that Engelhard  
24          objected to the letter?

25               MR. FARRELL:  Objection to form

1 and foundation.

2 THE WITNESS: Yeah, once again, I  
3 mean, there were, as I mentioned,  
4 thousands of cases. There's no way I  
5 could look at every single -- that  
6 anybody would look at every single  
7 piece of paper in a week and, and try  
8 to find that kind of information.

9 MR. PLACITELLA: Okay. 134.

10 (A document previously marked as  
11 Exhibit 134 was introduced.)

12 BY MR. PLACITELLA:

13 Q. This is a letter written to  
14 Cahill Gordon -- by Cahill Gordon to Michael  
15 Colley; correct?

16 MR. FARRELL: Object to the form.

17 THE WITNESS: I'm sorry. Could  
18 you repeat it.

19 BY MR. PLACITELLA:

20 Q. This is a letter written by  
21 Howard Sloane of Cahill Gordon to Michael  
22 Colley; correct?

23 A. Yes.

24 Q. Okay. And it's dated August 29,  
25 1991.

1 A. Yes.

2 Q. See that?

3 And this is the same Howard  
4 Sloane who sat in the depositions while the  
5 Engelhard scientists had their hand on a  
6 bible and swore that they found asbestos in  
7 the Emtal talc; correct?

8 MR. FARRELL: Objection to form,  
9 foundation, and argumentative,  
10 misstates the record.

11 THE WITNESS: I -- the  
12 characterization of what the testimony  
13 was is complicated, and I'm not sure  
14 that is necessarily a real good  
15 characterization. But he did sit in  
16 on Hemstock's deposition; yes.

17 BY MR. PLACITELLA:

18 Q. Okay. And what he does here is  
19 he recounts the number of times he went to  
20 Mr. Colley to try to get him to dismiss his  
21 cases; correct?

22 MR. FARRELL: Objection to form.

23 THE WITNESS: Yes, is it --

24 MR. BOISE: And foundation,  
25 misstates the letter.

1 THE WITNESS: Is it okay if I  
2 read through this?

3 MR. FARRELL: Yes.

4 BY MR. PLACITELLA:

5 Q. Please. Happy to go slower, but  
6 I'm trying to save time.

7 I'll blow it up so the jury can  
8 read it along with you.

9 MR. PLACITELLA: How much time do  
10 I have left over there?

11 THE VIDEOGRAPHER: We are at 4  
12 hour and 31 minutes, so that --

13 MR. PLACITELLA: Got it.

14 THE WITNESS: Okay. I've read  
15 through it.

16 BY MR. PLACITELLA:

17 Q. What he does here is he recounts  
18 the number of times he's asked him to  
19 dismiss his case on the assertion that  
20 there's no asbestos in the talc; correct?

21 MR. BOISE: Object to form.

22 MR. FARRELL: Objection to form.

23 THE WITNESS: The first part of  
24 your statement is correct. I'm not  
25 sure that -- if it's necessarily

1 related to the, the assertion of no  
2 asbestos in the talc.

3 BY MR. PLACITELLA:

4 Q. It says [reading]: 1, on  
5 January 2nd, 1990, our local counsel, Jack  
6 Kluznik, forwarded to you the affidavit of  
7 William Ashton and supporting materials and  
8 requested a dismissal based on these  
9 materials, which indicate the talc mined  
10 from the sole mine owned by Emtal in  
11 Johnson, Vermont did not contain asbestos.

12 A. Correct.

13 Q. Do you see that?

14 A. Yes.

15 Q. Okay. And then the second line  
16 he's complaining he didn't get a response;  
17 correct?

18 MR. FARRELL: Objection to form.

19 THE WITNESS: He says they  
20 received no reply; yes.

21 BY MR. PLACITELLA:

22 Q. And then the third thing he said  
23 is: We wrote to you again and -- based on  
24 the Ashton materials and renewed the request  
25 for dismissal; correct?

1 A. Yes, they say that.

2 Q. Okay. And then he keeps going to  
3 4, 5, 6 and 7; I'm going to go through it  
4 now. We'll let the jury read.

5 A. I think they're important,  
6 though.

7 Q. You want me to read them all?

8 A. I'd like to --

9 Q. Okay.

10 A. -- read number --

11 Q. [Reading]: On June 6th, 1991, we  
12 sent you depositions of Dr. Rohl and  
13 Chidester, and as well as 1977 NIOSH study,  
14 and again renewed our request for dismissal.

15 Do you see that?

16 A. Yes.

17 Q. Did you know what was in these  
18 depositions --

19 MR. FARRELL: Objection to form.

20 BY MR. PLACITELLA:

21 Q. -- that material? Do you know  
22 what was in there?

23 A. I, I haven't read those.

24 Q. Okay.

25 A. I may have seen parts of

1 Chidester's, but I don't know if I've read  
2 everything.

3 Q. The Chidester came from the  
4 Westfall case; right?

5 MR. FARRELL: Objection to form.

6 THE WITNESS: I'm assuming that's  
7 the deposition -- I don't know. I  
8 don't know what deposition this is and  
9 which one they're talking about. I'd  
10 have to look and see --

11 BY MR. PLACITELLA:

12 Q. Right. The Chidester came from  
13 the Westfall case. It's the only one I'm  
14 aware of. And that's the case where they  
15 here talk about the Chidester dep but never  
16 mention the Hemstock or Gale dep; right?

17 MR. FARRELL: Objection to form,  
18 argumentative.

19 BY MR. PLACITELLA:

20 Q. Right?

21 A. Again, my understanding is the  
22 Chidester dep would have come from Johnson  
23 and Johnson, because they were also involved  
24 in that case.

25 Q. Oh, you don't think that

1 Engelhard had the Chidester dep because they  
2 were involved in the case?

3 MR. FARRELL: Objection to form.

4 THE WITNESS: Remember, at this  
5 point everybody at Engelhard thought  
6 that they had been discarded under  
7 the --

8 BY MR. PLACITELLA:

9 Q. Oh, everything --

10 A. -- policy.

11 Q. -- was destroyed. Okay. I  
12 forgot. Okay.

13 A. Under, under the, you know,  
14 document-retention policy.

15 Q. Okay. All the way down at the  
16 bottom it says: If contrary to  
17 virtually every --

18 A. No, the next one, though. Could  
19 we go through the next one?

20 Q. Sure.

21 [Reading]: On July 21 [sic] Eric  
22 met with Mr. Shroyer of your office, as well  
23 as with you, and discussed at length these  
24 cases and our request for dismissal.

25 Did I read that correctly?

1           A.    Yeah.  So my point is here they  
2   talked at length on these cases.  We don't  
3   know whether they were talking just about  
4   Ashton, whether they were talking about  
5   other issues such as:  You don't have any  
6   proof that our product was in the, in the,  
7   in the location; you know, we don't agree  
8   necessarily with the fact that you're saying  
9   there was harm and injury; we don't agree  
10  with that.  There may have been a lot of  
11  other things that they were talking about.

12          Q.   Is that mentioned anywhere in  
13  this letter?

14          A.   Yeah, they do.  Actually, they  
15  say later, in that last paragraph [reading]:  
16  Our proposal will thus give you three years  
17  in which, should you -- the facts change and  
18  your experts somehow conclude your clients  
19  would have been injured by Emtal talc  
20  products, you can bring us back.  So --

21          Q.   Right.  Obviously you told them  
22  that there was no asbestos in the product.

23               MR. FARRELL:  You are  
24               interrupting the witness in the middle  
25               of his answer.

1 BY MR. PLACITELLA:

2 Q. I'll withdraw my last question,  
3 so you don't have to answer it.

4 MR. FARRELL: You don't, you  
5 don't get to withdraw --

6 MR. PLACITELLA: Yeah, I get to  
7 withdraw it --

8 MR. FARRELL: You don't get to  
9 withdraw it --

10 MR. PLACITELLA: -- because he's  
11 not being responsive and I've got a  
12 lot of material to cover.

13 MR. FARRELL: He's responding to  
14 your question.

15 MR. PLACITELLA: Okay.

16 MR. FARRELL: You do not get to  
17 interrupt the witness in the middle of  
18 an answer because you don't like the  
19 answer that you're getting, try to  
20 withdraw your question and cut off the  
21 witness' testimony.

22 He is entitled to an opportunity  
23 to respond fully to your question.

24 The fact you don't like the answers  
25 you're getting because the facts of

1           this case aren't what you think they  
2           are --

3           MR. PLACITELLA: Oh, come on.

4           MR. FARRELL: -- is not a basis  
5           to withdraw your question --

6           MR. PLACITELLA: Don't do that.

7           MR. FARRELL: -- or cut off a  
8           witness.

9           MR. PLACITELLA: Please don't do  
10          that. I don't do that to you in a  
11          dep, and I don't expect you to do it  
12          to me. Please don't do it.

13       BY MR. PLACITELLA:

14          Q. If you have something you want to  
15          say Mr. -- so we can move this along?

16          A. The only reason I'm digging in  
17          like this is because these documents are so  
18          old they're -- again they're 30 or 40 years  
19          old. And trying to reconstruct what people  
20          were saying in them is difficult. And you  
21          have to look at all parts of it. That's why  
22          I was referring to that.

23                 And when they say that your  
24          client -- you know, if you can somehow  
25          conclude that they were injured by Emtal,

1 we'll let you back into the cases.

2 I have no idea what the entire  
3 defense was in this case and, and what the  
4 claims were.

5 Q. You have no idea?

6 A. You'd have to look at the case  
7 file itself.

8 Q. Okay. And then it says  
9 [reading]: If contrary to virtually every  
10 other plaintiff's tire worker counsel you  
11 will not voluntarily dismiss us with a  
12 three-year toll, we will get back to  
13 seriously litigating these cases.

14 Do you see that?

15 A. I do.

16 Q. My question to you is: What was  
17 the factual basis for this statement? Where  
18 did the information come from that virtually  
19 every other counsel dismissed the case?  
20 Where did that come from? What records?

21 MR. FARRELL: Objection to form,  
22 foundation, misstates the letter.

23 THE WITNESS: I think that's the  
24 problem here is because this is so  
25 old. And it's a pretty broad

1 statement. We don't know the factual  
2 basis. And you'd have to look at each  
3 one of those cases and, and look at  
4 what the facts were and why the -- why  
5 and how it was resolved.

6 BY MR. PLACITELLA:

7 Q. So as you sit here today, your  
8 statement is that the cases with so old that  
9 there's no way we can reconstruct what  
10 happened. Is that your statement?

11 MR. FARRELL: Objection to form,  
12 foundation, misstates Mr. Steinmetz's  
13 testimony.

14 THE WITNESS: No. I'm saying  
15 that we'd have to go back and find  
16 those files as, as -- to the extent  
17 that they exist and look at each one  
18 and pull out all the information and  
19 analyze it to see why and how they  
20 were resolved.

21 BY MR. PLACITELLA:

22 Q. But that's not my question, sir.  
23 My question is: At the time this letter was  
24 written, what information were they relying  
25 upon to make this assertion?

1 MR. FARRELL: Objection --  
2 objection to form, foundation, asked  
3 and answered.

4 THE WITNESS: I just don't know.  
5 And I know you didn't talk to Howard  
6 Sloane. But if anybody could answer  
7 it, I would think he could because  
8 it's coming from his head. I don't  
9 know if he'd remember, but --

10 BY MR. PLACITELLA:

11 Q. Well, sir, you keep saying that.  
12 But you, BASF, you could have deposed Howard  
13 Sloane if you thought it was necessary;  
14 right?

15 MR. FARRELL: Objection to form,  
16 argumentative.

17 THE WITNESS: I guess I don't  
18 feel it was necessary. I'm  
19 comfortable stating that you have to  
20 look at each of these and determine  
21 them individually.

22 BY MR. PLACITELLA:

23 Q. So you didn't think it was  
24 necessary to depose Howard Sloane; we'd take  
25 him at his word. Correct?

1 MR. FARRELL: Objection to form,  
2 foundation, argumentative, asked and  
3 answered.

4 THE WITNESS: I think it's just  
5 the opposite. I'm not taking him at  
6 his word. I'm looking at this and  
7 saying there's no way we can know that  
8 without looking.

9 BY MR. PLACITELLA:

10 Q. Sir, you, BASF, never deposed  
11 Howard Sloane in this case; correct?

12 A. Not to my knowledge, no.

13 Q. Okay. Now -- and as you sit here  
14 today, you do not know -- it's just so we're  
15 clear and I'll move off this -- what the  
16 factual basis was for the statement made in  
17 the last paragraph of this letter, which I  
18 have highlighted and up on the screen?

19 MR. FARRELL: Objection to form,  
20 asked and answered.

21 BY MR. PLACITELLA:

22 Q. That's all I need to know.

23 A. That's exactly what I'm saying.

24 Q. Okay.

25 A. The only way to get to the

1 factual basis would be to look, would be to  
2 look at each individual case file.

3 Q. Is that what they did back then?  
4 Or did they have some other kind of record?

5 MR. FARRELL: Objection to form,  
6 asked and answered.

7 THE WITNESS: My recollection  
8 from the Joslyn deposition is that  
9 they had no data -- no way and no  
10 database of generating this  
11 information automatically. It would  
12 have been from their heads that they  
13 made these kinds of statements.

14 BY MR. PLACITELLA:

15 Q. Do you think they were making it  
16 up?

17 MR. FARRELL: Objection to form,  
18 foundation.

19 THE WITNESS: I, I don't see  
20 anything here that's not necessarily  
21 true. All he's saying is, you know,  
22 virtually ever other tire worker  
23 counsel has agreed to dismiss -- he  
24 doesn't say why; he doesn't say it's  
25 because of any particular reason --

1           and we hope you'll -- we expect you'll  
2           do the same thing or we'll have to  
3           litigate.

4                   (Discussion held off the  
5 stenographic record.)

6                   THE VIDEOGRAPHER: The time is  
7           now 4:29 p.m. We're going off the  
8           record.

9                   (Recess.)

10                  THE VIDEOGRAPHER: The time is  
11           now 4:42 p.m. We are back on the  
12           record.

13 BY MR. PLACITELLA:

14           Q. Did Cahill Gordon, to your  
15 knowledge, attempt to keep Engelhard and  
16 BASF up to speed in terms of the settlements  
17 that were reached in the talc litigation and  
18 the amounts?

19                   MR. FARRELL: Objection to form.

20                   THE WITNESS: My understanding is  
21 that there were updates and  
22 communications regarding those types  
23 of issues.

24           Q. Okay. So I want to show you  
25 Steinmetz 8.

1 (Steinmetz Exhibit 8 was marked  
2 for identification.)

3 BY MR. PLACITELLA:

4 Q. This is a letter from Bevan &  
5 Associates to Michael Sullivan. Do you see  
6 that?

7 A. I do, yes.

8 Q. And there's a bunch of  
9 attachments?

10 A. Yes.

11 Q. Okay. In this letter there's a  
12 listing of the cases that were settled and  
13 the amounts. Do you see that?

14 A. Yes.

15 Q. And on average, with some  
16 exceptions, it was a thousand dollars a  
17 case; correct?

18 A. Yes.

19 Q. Okay.

20 A. For the most part.

21 Q. And copied on all this, if you  
22 look at the very end, was Howard Sloane and  
23 Michael Hassett. Do you see that, the last  
24 page?

25 MR. FARRELL: Objection to form.

1                   Is this, is this two different  
2                   documents that you've attached  
3                   together or --

4                   MR. PLACITELLA: They were  
5                   produced that way together.

6                   MR. FARRELL: Well, we didn't  
7                   produce documents with staples in  
8                   them. Are these two documents that  
9                   you stapled together or...?

10                  MR. PLACITELLA: My understanding  
11                  is that they were sequential.

12                  MR. FARRELL: Okay. But I see a  
13                  cc -- well, I see bcc line on what  
14                  appears to be a separate document from  
15                  the first document. So I'm just  
16                  trying to understand whether you're  
17                  saying this is one document or two  
18                  documents, given your question about  
19                  who was copied on something.

20                  MR. PLACITELLA: Fair enough. I  
21                  believed it was one document. But I  
22                  don't know for sure; okay? It's  
23                  sequentially Bates numbered.

24                  BY MR. PLACITELLA:

25                  Q. Is this consistent with your

1 understanding that Engelhard was being kept  
2 up-to-date on what was going on with  
3 settlements?

4 MR. FARRELL: Objection to form,  
5 foundation.

6 THE WITNESS: So one comment  
7 before the question, then. I don't  
8 know that -- for example, looking at  
9 this, I don't know that Hassett and  
10 Sloane were copied on this first  
11 document from Bevan & Associates.

12 BY MR. PLACITELLA:

13 Q. Okay. You don't know one way --

14 A. Correct. I just don't know.

15 So you had a question. I'm  
16 sorry.

17 Q. That's fine. Did you see  
18 information like this in the database that  
19 you reviewed?

20 MR. FARRELL: Objection to form.

21 BY MR. PLACITELLA:

22 Q. When I say "information like  
23 this," I mean the client's name and the  
24 amounts.

25 MR. FARRELL: Objection to form.

1 THE WITNESS: I don't  
2 specifically remember it. I, I could  
3 imagine it being in there because in  
4 some cases it might have been in  
5 there.

6 This is not the type of list you  
7 could get from that Access database,  
8 though. It would never give you this  
9 much information for everybody. But  
10 some of it could be in there --

11 BY MR. PLACITELLA:

12 Q. Okay.

13 A. -- for some cases.

14 Q. I'll show you Exhibit 219.

15 (A document previously marked as  
16 Exhibit 219 was introduced.)

17 BY MR. PLACITELLA:

18 Q. Exhibit 219 is a January 25th,  
19 2006 letter from Ernst & Young to Cahill  
20 Gordon. Do you see that?

21 I'm sorry from --

22 A. It's on Cahill Gordon --

23 Q. Cahill Gordon to Ernst & Young,  
24 Mr. Verderami. I'm Italian, I should be  
25 able to say that.

1 A. Yes.

2 Q. And have you ever seen this  
3 before?

4 A. I don't recall seeing this.

5 Q. Okay. This is -- did you know  
6 that Ernst & Young was an auditor for  
7 Engelhard or BASF?

8 A. I, I believe I was aware of that,  
9 yes.

10 Q. Okay. And in preparing for  
11 today's deposition, did you review any other  
12 letters to or from auditors from Engelhard  
13 or BASF?

14 A. No, I did not.

15 Q. Okay. Why not?

16 MR. FARRELL: Objection to form  
17 and foundation.

18 THE WITNESS: Again, I'd have to  
19 go back to the, to the list of topics.  
20 I believe a significant or a major  
21 reason there was because of issues  
22 surrounding privilege. But I would  
23 have to look at it and see.

24 BY MR. PLACITELLA:

25 Q. Well --

1           A.    It was not one that we prepared  
2   for in much detail.

3           Q.    Well, topic number 6 says  
4   [reading]:  The information provided to  
5   auditors of Engelhard and BASF AG regarding  
6   Emtal claims and all reports issued by those  
7   auditors concerning Emtal claims.

8                   What did you do to prepare  
9   yourself?  And this was number 6.

10           MR. FARRELL:  Objection to form.

11           THE WITNESS:  I believe this was  
12   one that was -- I don't have my  
13   objection sheet in front of me -- oh.  
14   Here they are.  But I believe --

15   BY MR. PLACITELLA:

16           Q.    Are they your objections, sir, or  
17   your lawyers' objections?

18           MR. FARRELL:  Objection to form,  
19   argumentative.

20           THE WITNESS:  I meant my copy --

21   BY MR. PLACITELLA:

22           Q.    Okay.

23           A.    -- that I brought in.  But it's  
24   not here now, so...

25                   Yeah, this was the one where we

1     only received it one week ago. And, you  
2     know, again, focusing on priorities and, and  
3     what you can and have time to look at, this  
4     was not one that we spent a lot of time on.

5           Q.     So you didn't do anything to  
6     prepare to answer questions regarding this  
7     topic?

8                   MR. FARRELL:   Objection to form,  
9                   foundation, misstates the witness'  
10                  testimony.

11    BY MR. PLACITELLA:

12           Q.     Well, I'm asking:   What did you  
13     do?

14           A.     I spoke at a high level with  
15     counsel regarding designated issue number 6.  
16     And my general knowledge with respect to  
17     this is that, you know, there were auditors,  
18     reports were issued. We haven't had time to  
19     look for all those audit reports because it  
20     was only served a week. So I just didn't  
21     have a lot of information to work with.

22           Q.     Well, what do you mean "high  
23     level"?

24           A.     What I just said, that, that's  
25     what I mean by "high level." Not -- in not

1 a lot of detail is what it meant.

2 Q. Well, do you know where the audit  
3 reports are?

4 MR. FARRELL: Objection to form,  
5 foundation.

6 THE WITNESS: I don't personally  
7 know. If, if they exist, they would  
8 be in our database, I presume. But we  
9 haven't had a chance to look, as I  
10 understand it.

11 BY MR. PLACITELLA:

12 Q. Did you ask for them?

13 MR. FARRELL: Objection to form.

14 THE WITNESS: No.

15 BY MR. PLACITELLA:

16 Q. How do you know you can't just  
17 press a button and hand them to you?

18 MR. FARRELL: Objection to form,  
19 foundation.

20 THE WITNESS: I don't.

21 BY MR. PLACITELLA:

22 Q. So other than having a  
23 conversation with your lawyer, you did  
24 nothing to prepare for this dep- -- this  
25 topic for this deposition?

1 MR. FARRELL: Objection to form  
2 and foundation.

3 THE WITNESS: Yes. Again, my  
4 understanding is this was a late  
5 entry. We haven't had it for very  
6 long. Apparently, it was designated  
7 at the close of fact discovery. So we  
8 just didn't have time to look into it.

9 BY MR. PLACITELLA:

10 Q. Well, it says BASF will produce a  
11 representative to testify regarding this  
12 topic. And then it talks about it being  
13 untimely. But you're not prepared to talk  
14 about anything, are you?

15 MR. FARRELL: Objection to form,  
16 foundation, argumentative, misstates  
17 BASF's objections and response to the  
18 deposition notice.

19 THE WITNESS: To the extent that  
20 I've talked about it to this, as much  
21 as I have, that's the best I can do.

22 BY MR. PLACITELLA:

23 Q. So let's just be clear: Did you  
24 speak to anybody at BASF about whether the  
25 reports were available for you to review?

1 MR. FARRELL: Objection to form.

2 THE WITNESS: No.

3 BY MR. PLACITELLA:

4 Q. Did you speak to any witness to  
5 determine how hard it would be for you to  
6 get these reports?

7 MR. FARRELL: Objection to form.

8 THE WITNESS: No.

9 BY MR. PLACITELLA:

10 Q. Did you speak to anyone to  
11 determine whether the reports even exist?

12 MR. FARRELL: Objection to form  
13 and foundation.

14 THE WITNESS: Excuse me. No, I,  
15 I -- I believe that in the discussions  
16 with counsel we discussed that fact  
17 that we think some do exist. We just  
18 haven't been able to look for them. I  
19 would have to go back and talk some  
20 more because I don't remember that  
21 specifically.

22 BY MR. PLACITELLA:

23 Q. Do you have any idea how  
24 burdensome it would be to pull up the  
25 reports?

1 MR. FARRELL: Objection to form,  
2 foundation.

3 THE WITNESS: No; because I  
4 wouldn't be pulling them up.

5 BY MR. PLACITELLA:

6 Q. Didn't you tell me in a prior  
7 deposition that all this stuff was  
8 electronic and you could word-search it?

9 MR. FARRELL: Objection to form,  
10 foundation, misstates the witness'  
11 prior testimony.

12 BY MR. PLACITELLA:

13 Q. Just asking.

14 A. The information is in a database.  
15 You have to be able to find it.

16 Q. You just search for --  
17 word-search it; right?

18 MR. FARRELL: Objection to  
19 form --

20 BY MR. PLACITELLA:

21 Q. How hard is that?

22 MR. FARRELL: Objection to form  
23 and foundation.

24 THE WITNESS: And that's also  
25 assuming that the audit reports that

1           we're talking about specifically had  
2           the word "Emtal" in them because  
3           that's the information that's been put  
4           into the database.

5       BY MR. PLACITELLA:

6           Q.     Sure.

7           A.     There's a lot of other records,  
8       boxes and boxes of records --

9           Q.     Fair enough.

10          A.     -- from Engelhard that haven't  
11       been put into the database.

12                       So if those audit reports are in  
13       a different place, they might not be in this  
14       one. I just don't know.

15          Q.     But you never even asked for a  
16       search to be done to see if they exist --

17                       MR. FARRELL: Objection to  
18       form --

19       BY MR. PLACITELLA:

20          Q.     -- fair?

21                       MR. FARRELL: -- and foundation.

22                       THE WITNESS: I did not.

23       BY MR. PLACITELLA:

24          Q.     Okay. Topic number 9 asks for  
25       you to provide information for specific

1 cases, correct --

2 A. Yes.

3 Q. -- be able to testify to it --

4 A. Yes.

5 Q. -- correct?

6 One is Schwartz versus Eastern

7 Magnesita; correct?

8 A. Yes.

9 Q. Dynatron/Bondo talc litigation;  
10 correct?

11 A. Yes.

12 Q. Smith versus Emtal; correct?

13 A. Yes.

14 Q. The Kangas case?

15 A. Yes.

16 Q. The Weldon B. Smith case?

17 A. Yes.

18 Q. And that William L. Salling case;  
19 correct?

20 A. Yes.

21 Q. Okay. What information did you  
22 pull about these cases?

23 MR. FARRELL: Objection to form  
24 and foundation.

25 THE WITNESS: So some of this

1 information is privileged. But I did  
2 discuss each of the cases. I got  
3 information on each of them from  
4 counsel. And I feel like I can speak  
5 to these reasonably well and answer  
6 your questions.

7 BY MR. PLACITELLA:

8 Q. Okay. So do you have the -- did  
9 you actually look at documents in order to  
10 answer these questions?

11 A. In some cases, yes. In other  
12 cases the documents are privileged, so no.

13 Q. Well, what documents did you look  
14 at that aren't privileged?

15 A. I look at documents and mainly  
16 documents --

17 MR. FARRELL: I'm sorry. You're  
18 talking about on the topic; yes?

19 MR. PLACITELLA: Yes.

20 THE WITNESS: I mainly looked at  
21 documents that identify start dates  
22 and end dates for the case in  
23 question. For most of them, in the  
24 case of the Dynatron/Bondo talc  
25 litigation, much of it is privileged;

1           and so my information in those cases  
2           came from counsel.

3       BY MR. PLACITELLA:

4           Q.    Did you pull each of these files?  
5       Did you ask that the files for each of these  
6       cases be pulled so you could review them?

7           MR. FARRELL:  Objection -- excuse  
8       me.  Objection to form and foundation.

9           THE WITNESS:  No, there's no way  
10       I would have had time to do all that.  
11       I mean, there was so much information.

12       BY MR. PLACITELLA:

13       Q.    Well, you could just word-search  
14       your database for these case names and pull  
15       the files; right?

16       MR. FARRELL:  Objection to form,  
17       foundation.

18       THE WITNESS:  I guess  
19       word-searching and pulling files takes  
20       time.  But the big problem for me  
21       would be trying to review everything.  
22       I feel I have enough information to  
23       talk fairly well regarding the  
24       chronology of those claims.

25       BY MR. PLACITELLA:

1 Q. Sir, you were asked to produce  
2 these files today for the deposition. Where  
3 are they?

4 MR. FARRELL: Objection to form,  
5 foundation.

6 Which request are you referring  
7 to?

8 BY MR. PLACITELLA:

9 Q. All documents relating to claims  
10 or lawsuits filed against BASF, including  
11 Eastern Magnesia Talc, from before Westfall  
12 to January 1, 1988.

13 That would have covered these  
14 files; correct?

15 MR. FARRELL: And what does the  
16 response say?

17 BY MR. PLACITELLA:

18 Q. That would have covered these  
19 cases; correct?

20 MR. FARRELL: Objection to --

21 BY MR. PLACITELLA:

22 Q. Sir, all these case were filed  
23 before 1988; correct?

24 MR. FARRELL: I'm sorry. Which  
25 request, sir?

1 MR. PLACITELLA: Number 10.

2 MR. FARRELL: Objection to form  
3 and foundation. I note our objection  
4 in response to the notice.

5 THE WITNESS: I'm sorry, sir.

6 Your question was?

7 BY MR. PLACITELLA:

8 Q. All of these cases that are  
9 mentioned in the topic we're addressing now  
10 that we just went through are covered in my  
11 request number 10 for documents; correct?  
12 They all occurred before 1988?

13 A. Yes.

14 Q. Okay.

15 A. One comment, though, I have is  
16 that Weldon Smith I recognize. I'm not sure  
17 that we recognize Smith versus Emtal as  
18 being different from Weldon Smith or if it  
19 was a different Smith case.

20 Q. Okay. And although you were  
21 asked to bring those documents with you  
22 today, you didn't bring anything; correct?

23 MR. FARRELL: Objection to form,  
24 foundation, misstates the record.

25 THE WITNESS: I, I didn't realize

1           that I was asked to bring them. I  
2           didn't bring them.

3   BY MR. PLACITELLA: '

4           Q.    But you looked at them?

5           A.    As I, as I mentioned, I didn't  
6   look at the full cases. I looked at  
7   information regarding litigation initiation  
8   and, and resolution. But I didn't look at  
9   the full files.

10          Q.    Are they here in this office?

11          A.    I don't know.

12               MR. FARRELL:  Objection to form.

13               MR. PLACITELLA:  Are they here in  
14   this office, Mr. Farrell, the files  
15   relating to this case?

16               MR. FARRELL:  You want my  
17   response to this question?

18               MR. PLACITELLA:  All I want to  
19   know is are they here in this office.

20               MR. FARRELL:  I'll be happy to  
21   explain. We have already produced  
22   thousands of pages of documents. We  
23   stated in the response to this notice  
24   that we had produced documents. We  
25   ran the search terms that the

1 plaintiffs asked us to run, produced  
2 those nonprivileged documents. You  
3 received thousands of pages of  
4 documents. And BASF has asserted  
5 objections in response to these  
6 requests, stating that it wouldn't be  
7 producing further documents since the  
8 requests overlapped with prior  
9 requests that plaintiffs have served.

10 I would also further note that  
11 you have used documents from the  
12 Schwartz case, from the Kangas case,  
13 from the Bondo case in prior  
14 depositions in discovery in this case.  
15 So you have these documents. So any  
16 suggestion that --

17 MR. PLACITELLA: That's not true.

18 MR. FARRELL: Excuse me. Any  
19 suggestion that documents on Westfall  
20 or Schwartz or Kangas have been  
21 withheld from you in some way, other  
22 than privileged documents, is not  
23 correct. We've run the search terms  
24 you've asked us to run. We've  
25 produced thousands of pages of

1 documents to you. And those documents  
2 have been received by plaintiff's  
3 counsel six months ago.

4 MR. PLACITELLA: Sir, you never  
5 produced --

6 MR. FARRELL: We asserted an  
7 objection in response to this notice.

8 MR. PLACITELLA: Sir --

9 MR. FARRELL: You never raised  
10 any dispute with that objection.

11 MR. PLACITELLA: Sir, that's not  
12 our obligation under the law. The law  
13 is very clear. I can cite you chapter  
14 and verse. We'll fight it later with  
15 the Judge.

16 This man said he reviewed  
17 documents that were nonprivileged  
18 related to these files, and I'm asking  
19 you to produce them here.

20 MR. FARRELL: They have been  
21 produced to plaintiff's counsel  
22 previously. The documents that  
23 Mr. Steinmetz looked at, I recall  
24 seeing several of them used as  
25 exhibits by plaintiff's counsel, by

1 Mr. Pollack, for example, and by you  
2 at the deposition of Mr. Dornbusch.

3 MR. PLACITELLA: Okay.

4 MR. FARRELL: So you have the  
5 documents that Mr. Steinmetz looked at  
6 concerning the Schwartz case and the  
7 Kangas case and the several others  
8 mentioned in that topic.

9 MR. PLACITELLA: We asked for the  
10 files. The only documents that we  
11 have that I understand came from the  
12 insurance production -- which I'm  
13 happy to go over and I plan on going  
14 over.

15 My question is: There was  
16 specific files we asked for. We laid  
17 them out; all right? We tried to keep  
18 it narrow after our meet-and-confer.  
19 And I'm asking you to produce whatever  
20 files you have related to these five  
21 cases. It's not a lot.

22 MR. FARRELL: First of all, it is  
23 a lot.

24 MR. PLACITELLA: Okay.

25 MR. FARRELL: And second of

1 all --

2 MR. PLACITELLA: It is a lot?

3 MR. FARRELL: -- we've previously  
4 produced documents. You served a new  
5 request for production a week before  
6 this deposition, after the fact  
7 discovery cutoff in this case. Your  
8 request was improper. We noted that  
9 it was improper in our responses and  
10 objections. We've objected to the  
11 request. We've previously produced  
12 documents, including using search  
13 terms and a protocol that the  
14 plaintiffs agreed too.

15 MR. PLACITELLA: Okay.

16 MR. FARRELL: You have documents  
17 regarding these cases. And we stand  
18 by our objections.

19 MR. PLACITELLA: Okay. So just  
20 so we're clear, although the documents  
21 were called for, you did not produce  
22 them here today?

23 MR. FARRELL: That is not  
24 correct.

25 MR. PLACITELLA: Okay. Do you

1           have -- then show me the ones you have  
2           with you here today.

3           MR. FARRELL: I didn't -- I don't  
4           have them with me here today --

5           MR. PLACITELLA: That's all I  
6           wanted to ask.

7           MR. FARRELL: -- Mr. Placitella,  
8           because they've been produced to you  
9           in the past, as evidenced by the fact  
10          that you've used them as exhibits to  
11          depositions in this case.

12          MR. PLACITELLA: So you've  
13          produced to us -- not the insurance  
14          companies -- you've produced to us  
15          documents on the Kangas case? Is that  
16          what you're saying?

17          MR. FARRELL: You have documents  
18          on the Kangas case.

19          MR. PLACITELLA: You have  
20          produced to us, yes or no, documents  
21          on the Kangas case?

22          MR. FARRELL: If they were  
23          responsive to the search terms that  
24          plaintiffs proposed and they were not  
25          privileged, they would have been

1 produced to you six months ago.

2 MR. PLACITELLA: Okay. Have you  
3 produced documents -- the file on the  
4 Kangas case?

5 MR. FARRELL: We have done the  
6 search protocol that the plaintiffs --

7 MR. PLACITELLA: Okay, you're not  
8 going to answer. And I'm not going to  
9 fight with you.

10 MR. FARRELL: Are you saying you  
11 have no documents on the Kangas case?  
12 Are you making that representation?

13 MR. PLACITELLA: I'm not getting  
14 into it with you. We'll let the Judge  
15 decide.

16 MR. FARRELL: Okay. You don't  
17 want to respond to my question.

18 MR. PLACITELLA: I'm not here to  
19 answer your questions.

20 BY MR. PLACITELLA:

21 Q. Okay. So you looked at documents  
22 in preparation for today's deposition  
23 relating to these cases listed, A through F;  
24 correct?

25 A. Yes.

1 Q. Where are those documents?

2 A. They're back at the hotel where  
3 I'm staying.

4 Q. Okay. Is there a reason you  
5 didn't bring them with you?

6 A. I had a lot of documents; they're  
7 really heavy. I didn't want to carry them  
8 around if I didn't have to.

9 Q. Okay. What documents did you  
10 look at related to the Schwartz versus  
11 Eastern Magnesia Talc case?

12 A. I'm trying to remember exactly  
13 what the documents were. I don't remember  
14 them specifically. I can give you the  
15 dates, the start and finish dates for  
16 Schwartz. I'm just not sure exactly what I  
17 looked at in that case.

18 Q. So why don't you give me the  
19 start and finish dates for Schwartz versus  
20 Eastern Magnesia Talc?

21 MR. FARRELL: Objection to form.

22 BY MR. PLACITELLA:

23 Q. Go ahead.

24 A. So Schwartz began around June of  
25 1983 and finished around June of 1984, in

1 the first couple of weeks. I don't remember  
2 the exact date in June.

3 Q. Am I correct the final settlement  
4 agreement wasn't signed until July?

5 MR. FARRELL: Objection to form.

6 THE WITNESS: I don't know. It  
7 may be, it may be, may be true.

8 BY MR. PLACITELLA:

9 Q. Okay. The Dynatron/Bondo talc  
10 litigation, what are the dates for that?

11 MR. FARRELL: Objection to form  
12 and foundation.

13 THE WITNESS: So the  
14 Dynatron/Bondo talc litigation  
15 involved Kangas and Weldon and  
16 Salling. A lot of the information  
17 involved in this is unclear because  
18 the litigation was originally made  
19 against Bondo. So there's a lot of, a  
20 lot of work in trying to reconstruct  
21 when Engelhard, for example, became  
22 involved in it; what they knew, when  
23 they knew it. This was, as, as I  
24 mentioned before, so many years ago.

25 So the best that I can tell you

1           for the start of the Dynatron/Bondo  
2           litigation is that it began around  
3           June of 1984, towards the end of June  
4           of 1984.

5                     Again, we don't know exactly when  
6           Engelhard became involved as a  
7           participant in the litigation exactly.

8   BY MR. PLACITELLA:

9           Q.    Uh-huh.

10          A.    And we know from privileged  
11       documents that that litigation ended around  
12       the middle -- around June of 1986.  Again, I  
13       haven't seen documents related to that  
14       because they're privileged.  But that's the  
15       information that I have.

16          Q.    Okay.  And the Smith versus  
17       Emtal, you think that's the same as Weldon  
18       Smith?

19          A.    We couldn't identify -- I asked  
20       counsel, and they couldn't identify a  
21       different.  So I'm assuming that Weldon  
22       Smith is the same as Smith.

23          Q.    Okay.

24          A.    The dates for that is, are --  
25       Weldon Smith, they first tried to serve

1 Engelhard in January of 1985. But we know  
2 from the dismissal that it wasn't served  
3 correctly. So again, we're trying to  
4 reconstruct what was known by whom, you  
5 know, 20, 25 years ago.

6 Q. Uh-huh.

7 A. So we haven't been able to  
8 completely reconstruct when Engelhard knew  
9 that they had been served because it was  
10 done incorrectly. We know that in December  
11 of 1985 it was dismissed because it hadn't  
12 been served correctly.

13 Q. Uh-huh.

14 A. So sometime during 1985 Engelhard  
15 learned about this. We just don't know when  
16 from the records that we've been able to dig  
17 up.

18 Q. Okay. What about Kangas?

19 A. And then --

20 MR. FARRELL: Objection to form,  
21 asked and answered.

22 MR. PLACITELLA: No.

23 THE WITNESS: So Kangas and  
24 Salling, from my understanding, were  
25 part of the Dynatron/Bondo litigation.

1           And again, as I mentioned, we haven't  
2           be able to identify precisely when  
3           they were brought in; although we know  
4           that the litigation ended around the  
5           middle of 1986, from privileged  
6           documents.

7       BY MR. PLACITELLA:

8           Q.    Okay. So I want to show you  
9           what's been marked as 214. And these are  
10          documents that were not produced by -- at  
11          least not to my knowledge -- BASF but  
12          produced by Arrowood.

13                   (A document previously marked as  
14          Exhibit 214 was introduced.)

15       BY MR. PLACITELLA:

16          Q.    Ask you if you've ever seen that  
17          before.

18          A.    I don't recall seeing -- I've  
19          seen a letter from C&F Underwriters Group  
20          because I recognize the logo. I don't  
21          remember these specifically. And I only  
22          remember one letter. There may have been  
23          others, but I don't remember them.

24          Q.    So you've never seen this  
25          particular file before?

1 MR. FARRELL: Objection to form  
2 and foundation.

3 THE WITNESS: By "file" you mean  
4 all of these?

5 BY MR. PLACITELLA:

6 Q. Yes.

7 A. Correct; I haven't seen every one  
8 of these.

9 Q. If you go to the Bates Number  
10 49418 -- do you see that?

11 A. Yes.

12 Q. Okay. And that's --

13 MR. FARRELL: The documents that  
14 you have here are not consecutively  
15 Bates numbered. They're stapled  
16 together. Are these different  
17 documents?

18 MR. PLACITELLA: I thought they  
19 were all together.

20 MR. FARRELL: Well, the Bates  
21 numbers are not consecutive. Is it  
22 one document or is it multiple  
23 documents?

24 MR. PLACITELLA: It might be  
25 multiple documents, which is fine.

1 I'll go through each one. It's not a  
2 problem.

3 BY MR. PLACITELLA:

4 Q. Looking at Bates Number 49418,  
5 from -- you see that, July 15th, 1985?

6 A. Yes, I do.

7 Q. Okay. Have you seen this one  
8 before?

9 A. I don't recall it.

10 Q. Okay. This -- the re is:  
11 Various versus Engelhard Minerals and  
12 Chemical Corp.

13 Do you see that?

14 A. Yes.

15 Q. And you know that Royal Insurance  
16 was the insurance carrier for Engelhard?

17 A. Yes, it was.

18 MR. FARRELL: Objection to form.

19 THE WITNESS: It was one of them,  
20 yes.

21 BY MR. PLACITELLA:

22 Q. And that Alexander & Alexander  
23 was the agent that Engelhard used?

24 MR. FARRELL: Objection to form.

25 THE WITNESS: I don't recall

1           that, but I don't disagree with you.

2       BY MR. PLACITELLA:

3           Q.    Okay. And the re here is:

4       Various versus Engelhard Minerals &  
5       Chemicals.

6           Do you see that?

7           A.    Yes.

8           Q.    Okay. And it talks about

9       [reading]: The plaintiffs' names are Leroy  
10      Kangas, Weldon B. Smith, and William  
11      Salling. A reference is made that Engelhard  
12      Mineral -- Magnesium Talc is a subsidiary of  
13      Engelhard.

14           Do you see that?

15           A.    Yes.

16           Q.    And this occurred in 1985;  
17      correct?

18           MR. FARRELL: Objection to form.

19           THE WITNESS: The -- all the  
20      dates in here are for 1985; yes.

21       BY MR. PLACITELLA:

22           Q.    Okay. Can you go to Bates Number  
23      49428.

24                   (Discussion held off the  
25      stenographic record.)

1 BY MR. PLACITELLA:

2 Q. This was a May 20th, 1985 letter.

3 And the insured is Engelhard Corporation;

4 correct?

5 A. Yes.

6 Q. And the venue is Superior Court,

7 State of California?

8 A. Yes.

9 Q. And this talks about the Salling  
10 and Kangas lawsuits; correct?

11 MR. FARRELL: Objection to form.

12 THE WITNESS: It does refer to  
13 them, yes.

14 BY MR. PLACITELLA:

15 Q. So at least by virtue of this  
16 document, Engelhard's insurance carriers  
17 were aware that these cases were alive and  
18 existed; correct?

19 MR. FARRELL: Objection to form  
20 and foundation.

21 THE WITNESS: It indicates that  
22 the insurance carriers had heard about  
23 them. I'm not sure that these reports  
24 would necessarily reflect that they  
25 were ongoing; but that they had been

1           advised of the possibility or maybe --  
2           that there was a chance that these  
3           would be entered.

4                   But the information does agree  
5           with the information I have regarding  
6           these cases.

7   BY MR. PLACITELLA:

8           Q.    It indicates, does it not, that  
9   Howard Sloane is already handling the  
10   litigation?

11                   MR. FARRELL:  Objection to form.

12                   THE WITNESS:  It says:  We  
13   believe Mr. Howard Sloane is the  
14   person familiar.

15   BY MR. PLACITELLA:

16           Q.    Right.  And he was your lawyer  
17   handling the talc cases; right?

18                   MR. FARRELL:  Objection to form.

19                   THE WITNESS:  Yes.  I don't know  
20   if he was personally handling these at  
21   the time.  I -- you would have to ask  
22   him.  I don't know.

23   BY MR. PLACITELLA:

24           Q.    Okay.  And --

25           A.    It may be that he was the contact

1 person there or the point person --

2 Q. Fair enough.

3 A. -- at Cahill.

4 Q. And in discussing these lawsuits,  
5 Englehard Corporation was cc'd; correct?

6 MR. FARRELL: Objection to form.

7 BY MR. PLACITELLA:

8 Q. Jesse Pagonis was cc'd; correct?

9 A. Yes. That's on the next page;  
10 yes.

11 Q. He was a risk manager for  
12 Engelhard at the time?

13 A. Yes.

14 Q. Okay. Ray Devine was cc'd;  
15 correct?

16 A. Yes.

17 Q. What was his job?

18 A. I've seen his name. I'm not sure  
19 what his role was. I think he was involved  
20 possibly in insurance or claims, but I don't  
21 know that.

22 Q. And Howard Sloane was cc'd;  
23 correct?

24 A. Yes.

25 Q. So clearly at this point in time,

1 1985, Engelhard was aware of these cases?

2 MR. FARRELL: Objection to form.

3 BY MR. PLACITELLA:

4 Q. Fair?

5 A. Yes.

6 Q. Okay. By the way, there's two  
7 pages at the end that shouldn't be there.  
8 We can rip them off; a mistake. I saw that  
9 on the train on the way in.

10 (Discussion held off the  
11 stenographic record.)

12 BY MR. PLACITELLA:

13 Q. Now, I want to show you what's  
14 been marked 215.

15 (A document previously marked as  
16 Exhibit 215 was introduced.)

17 BY MR. PLACITELLA:

18 Q. 215 is a January 24, 1985 letter  
19 from Anistics to Royal Insurance Company  
20 with the cc -- sorry -- to Paulette Bynoe,  
21 Jesse Pagonis, and Michael Singer. Do you  
22 see that?

23 A. Yes.

24 Q. And who -- do you know who  
25 Anistics is?

1 First of all, have you ever seen  
2 this before?

3 A. I believe I have seen this.

4 Q. Okay. Do you know who Anistics  
5 is?

6 A. It looks, it looks like this is a  
7 loss run. So it would be from an insurer or  
8 possibly from a broker. I'm not sure who  
9 Anistics is, though.

10 Q. What's a loss run?

11 MR. FARRELL: Objection to form.

12 THE WITNESS: My understanding of  
13 a loss run, it's a, a regular printout  
14 of information regarding cases that  
15 are ongoing --

16 BY MR. PLACITELLA:

17 Q. Okay.

18 A. -- insurance claims that are  
19 ongoing.

20 Q. Okay. And we discussed Jesse  
21 Pagonis. Do you know who any of these other  
22 ccs are, Singer or Bynoe?

23 A. I'm not familiar with them, I may  
24 have seen them, but I don't really remember  
25 them right now.

1 Q. Okay. And if you go to the next  
2 page...

3 MR. BOISE: What's the Bates  
4 Number?

5 MR. PLACITELLA: 873.

6 BY MR. PLACITELLA:

7 Q. There is the name Leroy Kangas.  
8 And it say "Willia" -- I'm assuming that's  
9 "William" -- Salling. Do you see that?

10 A. I do.

11 Q. Okay. And do you understand what  
12 the various columns are and what they stand  
13 for in this loss run?

14 MR. FARRELL: Objection to form  
15 and foundation.

16 THE WITNESS: I don't understand.  
17 We talked about this -- I talked about  
18 this with counsel. And I believe they  
19 had a theory, and I don't remember  
20 what it was. But it wasn't clear  
21 because we were saying we weren't sure  
22 what those -- obviously, the last  
23 three columns look like a date. But  
24 I'm not sure what they represented.  
25 I -- counsel may have a better idea,

1 but I don't know.

2 BY MR. PLACITELLA:

3 Q. Okay. Now, in -- sorry about  
4 that.

5 Did you review any other loss  
6 runs in preparation for today's deposition?

7 MR. FARRELL: Objection to form.

8 THE WITNESS: I'm trying to  
9 remember. There may have been one  
10 other, and I just don't remember the  
11 details of it. It was a different --  
12 it was from a different company, so it  
13 didn't look like this one. But I  
14 don't remember much about it, so I  
15 can't answer many questions about it.

16 BY MR. PLACITELLA:

17 Q. Okay.

18 A. I would, I would recognize it if  
19 I saw it; I'm sure. I just don't remember  
20 it.

21 Q. Okay. In, in designated issue  
22 number 11 you were asked to come testify  
23 about loss runs reflecting notice of claims  
24 for alleged asbestos-related injury and any  
25 communications with persons other than

1 Engelhard attorneys concerning the renewal  
2 of insurance for asbestos-related claims.

3 Do you see that?

4 A. Yes, I do see it.

5 Q. Okay. Can you tell me what you  
6 did to prepare yourself to respond to that  
7 area of inquiry?

8 A. This is similar to some of the  
9 others that were brought to our attention at  
10 the last minute last week. And so I talked  
11 at a high level again with counsel regarding  
12 this one. And you can see, I did look at a  
13 couple of loss runs so that I could at least  
14 talk about it with you. But I didn't do a  
15 lot -- any independent research into this.

16 Q. Did you ask BASF to provide you  
17 with the loss runs that were in their  
18 possession so that you could review them and  
19 be prepared to testify today?

20 MR. FARRELL: Objection to form,  
21 foundation, assumes facts.

22 THE WITNESS: I, I believe they  
23 may have shown me what they have.

24 Keep in mind that the loss runs were  
25 generated by the insurers, not by

1 Engelhard. So the best place to go  
2 for those, obviously, would be with  
3 the insurers.

4 I may have seen everything that  
5 we have. I just don't know that we  
6 have that much information.

7 BY MR. PLACITELLA:

8 Q. Okay. Well, what did you see  
9 other than this one document I gave you on  
10 loss runs?

11 A. I mentioned I saw one other, and  
12 I don't know if it was a loss run related to  
13 this or not.

14 Q. Did you ask whether there were  
15 loss runs in the possession of BASF for you  
16 to review in order to come testify?

17 MR. FARRELL: Objection to form,  
18 foundation, assumes facts.

19 THE WITNESS: I didn't ask for  
20 them because they showed them to me.

21 BY MR. PLACITELLA:

22 Q. Well, do you know whether you  
23 were shown all the loss runs that are in the  
24 possession of BASF?

25 MR. FARRELL: Objection to form,

1 foundation, assumes facts.

2 THE WITNESS: I know that counsel  
3 was trying to prepare me as best they  
4 could. I, I'm confident that if they  
5 had had more, they would have shown  
6 me.

7 The discussion we had was that  
8 the loss runs would have come from  
9 insurers, not from Engelhard. So the  
10 chances are that we don't have any  
11 more is my impression.

12 Q. Well, weren't they permanent  
13 records that were kept by BASF? When the  
14 loss run was sent to Jesse Pagonis, what  
15 happens to it?

16 MR. FARRELL: Objection to form,  
17 foundation, assumes facts, calls for  
18 speculation.

19 THE WITNESS: I don't know if we  
20 even received them. I don't know what  
21 happened to them. And I'm not sure  
22 what the policy regarding, regarding  
23 document retention called for with  
24 respect to these. So I don't know.

25 BY MR. PLACITELLA:

1 Q. Well, this one document that the  
2 insurance carriers gave us, they show that  
3 the loss runs were sent to Jesse Pagonis;  
4 correct?

5 MR. FARRELL: Objection to form  
6 and foundation.

7 THE WITNESS: In this one case it  
8 was.

9 BY MR. PLACITELLA:

10 Q. Yeah. So did you ask to see what  
11 else was in Jesse Pagonis' files or the  
12 person who succeeded him, in terms of loss  
13 runs related to asbestos-related claims?

14 MR. FARRELL: Objection to form,  
15 foundation, assumes facts.

16 THE WITNESS: No, I didn't. I  
17 worked with what we had -- what was  
18 provided to me.

19 BY MR. PLACITELLA:

20 Q. So in preparation for today's  
21 deposition, other than what the lawyers told  
22 you, you made no independent investigation  
23 to determine what loss runs were in the  
24 possession of BASF related to the Emtal talc  
25 litigation; correct?

1 MR. FARRELL: Objection to form  
2 and foundation.

3 THE WITNESS: That's correct. I  
4 was depending on counsel and what they  
5 provided me with.

6 BY MR. PLACITELLA:

7 Q. And as you sit here today, you  
8 don't know one way or the other whether  
9 counsel ever made a request of BASF for all  
10 of the loss runs related to Emtal talc  
11 litigation; correct?

12 MR. FARRELL: Objection to form  
13 and foundation.

14 THE WITNESS: I don't know that  
15 they did, and I don't know that  
16 Engelhard would have kept them all,  
17 so...

18 BY MR. PLACITELLA:

19 Q. You don't know one way or the  
20 other?

21 A. Correct.

22 Q. Okay. Going back to -- let's  
23 sidetrack for a second. Going back to topic  
24 number 9...

25 A. Yes.

1 Q. Am I correct that the digital  
2 database has the capacity for you to search  
3 for a case name and see if it will come up  
4 and what files relate to that case in the  
5 digital database?

6 MR. FARRELL: Objection to form,  
7 foundation, misstates the record.

8 THE WITNESS: We can do searches  
9 in the database.

10 BY MR. PLACITELLA:

11 Q. Okay. Did you, did you run a  
12 search for the Kangas case?

13 MR. FARRELL: Objection to form  
14 and foundation.

15 THE WITNESS: I didn't. My  
16 understanding from the discussion  
17 earlier is that, in responding to your  
18 requests for data and documents, we  
19 have done that type of thing. I don't  
20 know if it was done again in  
21 preparation for me coming in to  
22 prepare for this. But I didn't do it.

23 BY MR. PLACITELLA:

24 Q. So you never requested, in  
25 preparing for today's deposition, that a

1 search of the database be done to see what  
2 is in there on the Kangas case; right?

3 MR. FARRELL: Objection to form,  
4 foundation, misstates the record.

5 THE WITNESS: I did not request  
6 anything specific.

7 BY MR. PLACITELLA:

8 Q. So as you sit here today, you do  
9 not know whether there is anything in the  
10 database related to the Kangas case;  
11 correct?

12 MR. FARRELL: Objection to form  
13 and foundation.

14 THE WITNESS: I know to the  
15 extent that our counsel has said today  
16 that you've used some of the Kangas  
17 documents in other depositions. But  
18 that's all -- that's what I know about  
19 it.

20 BY MR. PLACITELLA:

21 Q. As you sit here today, you do not  
22 know whether there is anything in the  
23 database related to the Kangas case;  
24 correct?

25 MR. FARRELL: Same objections.

1 THE WITNESS: Same answer. To  
2 the extent that I know that counsel  
3 has said that you've used some of them  
4 in depositions, then it, it appears  
5 that some of them have been produced  
6 to you. But I don't know that  
7 personally.

8 BY MR. PLACITELLA:

9 Q. Well, we'll do that on another  
10 day.

11 Did you ask for --

12 MR. FARRELL: There's not going  
13 to be another day. So if you have a  
14 question about the Kangas case, you  
15 should ask it now.

16 MR. PLACITELLA: Okay.  
17 Respectfully, that will be for the  
18 Court to decide.

19 MR. FARRELL: Well, no.  
20 Respectfully, Rule 30, Rule 30 states  
21 a deposition of one day. We're here.  
22 If you have a question about the  
23 Kangas --

24 MR. PLACITELLA: I'm going to ask  
25 all the questions I can, but I will

1 reserve my right to go to the Court.

2 BY MR. PLACITELLA:

3 Q. Did you request --

4 MR. FARRELL: We can get the  
5 Judge on the phone now.

6 MR. PLACITELLA: No, I'm not  
7 going to do that. I want to finish my  
8 questions.

9 BY MR. PLACITELLA:

10 Q. Did you --

11 MR. FARRELL: Well, you will  
12 finish them today in the seven hours  
13 and one day allotted.

14 MR. PLACITELLA: Okay.

15 BY MR. PLACITELLA:

16 Q. Did you request a search be done  
17 for the Weldon Smith case in the database?

18 A. I didn't --

19 MR. FARRELL: Objection.  
20 Objection to form and foundation.

21 THE WITNESS: I did not request a  
22 search. But I, as I mentioned, I have  
23 information on the initiation of the  
24 case and the final disposition and why  
25 it was, why it was decided.

1 BY MR. PLACITELLA:

2 Q. Did you request that a search be  
3 done of the database for the Salling case?

4 MR. FARRELL: Objection to form  
5 and foundation.

6 THE WITNESS: That's the same  
7 situation as Kangas. It was part of  
8 the same litigation. I didn't ask for  
9 anything specific. Counsel brought me  
10 up to speed on, on the start dates or,  
11 or the issues surrounding when the  
12 start date was for that litigation and  
13 also informed me that there is  
14 privileged information regarding the  
15 end of that -- of Engelhard's  
16 involvement in that litigation.

17 BY MR. PLACITELLA:

18 Q. So am I correct, then, based upon  
19 your testimony, that between 1982 and  
20 1988 -- or 1987, okay -- Engelhard was  
21 involved in the Westfall case; correct?

22 MR. FARRELL: Objection to form  
23 and foundation, misstates the witness'  
24 testimony.

25 THE WITNESS: Well, not for that

1           entire period. I mean --

2       BY MR. PLACITELLA:

3           Q.   Well, no. During that time  
4       period, not the entire time period.

5           A.   Yes.

6           Q.   Well, let me ask the question  
7       this way: Prior to 1987, Engelhard was  
8       involved in the Westfall case; correct?

9           A.   That occurred before 1987.

10          Q.   That's one.

11                They were involved in the  
12       Schwartz case?

13               MR. FARRELL: Objection --

14       BY MR. PLACITELLA:

15          Q.   Correct?

16               MR. FARRELL: Objection to form.

17               THE WITNESS: Yes; from June of  
18       1983 until June of 1984.

19       BY MR. PLACITELLA:

20          Q.   So that's two.

21          A.   Yeah.

22          Q.   They were involved in the Smith  
23       versus Emtal case?

24               MR. FARRELL: Objection to form  
25       and foundation, assumes facts.

1 THE WITNESS: From some point in  
2 1985. We're not sure when it started.  
3 It could have been at the beginning of  
4 the year, the middle of the year,  
5 towards the end; we don't know. But  
6 it ended in December of 1985.

7 BY MR. PLACITELLA:

8 Q. So that's three.

9 They were involved in the Kangas  
10 case?

11 MR. FARRELL: Objection to form,  
12 foundation, assumes facts.

13 THE WITNESS: My understanding is  
14 that at some point Engelhard was  
15 involved in the Kangas case. Again,  
16 we don't know whether it started in  
17 the middle of 1984 or the end of 1984  
18 or at some other point. But we know  
19 at some point Engelhard became aware  
20 and was part of it.

21 BY MR. PLACITELLA:

22 Q. Okay. So that's four.

23 And they were involved in the  
24 Weldon Smith case?

25 MR. FARRELL: Objection to form

1 and foundation.

2 THE WITNESS: Yes. That was  
3 1985.

4 BY MR. PLACITELLA:

5 Q. Okay. So that's five.

6 And then the William Salling  
7 case; correct?

8 A. That was part of the --

9 MR. FARRELL: One moment.

10 Objection to form and foundation.

11 I --

12 MR. PLACITELLA: Please don't  
13 testify.

14 MR. FARRELL: You've counted the  
15 Smith case twice. I'm sure it was  
16 inadvertent, but you counted it twice.  
17 If you're trying to make some list,  
18 you've counted the case twice.

19 THE WITNESS: Yeah, thank you. I  
20 was going to -- I noticed that too,  
21 yes.

22 BY MR. PLACITELLA:

23 Q. So there was only one Smith case?

24 A. As far as I understand --

25 Q. Okay.

1 A. -- yes.

2 Q. And then the Salling case. So  
3 that's five; correct?

4 MR. FARRELL: Objection to form  
5 and foundation, assumes facts.

6 THE WITNESS: Which was linked to  
7 the Kangas Dynatron/Bondo litigation.

8 BY MR. PLACITELLA:

9 Q. So between 1982 and 1987,  
10 Engelhard was involved in five separate  
11 cases; correct?

12 MR. FARRELL: Objection to form,  
13 foundation --

14 BY MR. PLACITELLA:

15 Q. Five separate plaintiffs?

16 MR. FARRELL: Objection to form,  
17 foundation, misstates the record.

18 THE WITNESS: They were involved  
19 in litigation. Of course, there were  
20 times when there was no active or  
21 pending litigation during that period.

22 BY MR. PLACITELLA:

23 Q. Right. But during that time  
24 period they were involved in five different  
25 cases; correct?

1 MR. FARRELL: Objection to form,  
2 foundation, misstates the record.

3 THE WITNESS: We went through the  
4 cases and when they were involved.  
5 And as I mentioned, we know that  
6 probably the last half of 1986 there  
7 were no cases at all; and quite  
8 possibly parts of 1984 there were no  
9 cases.

10 BY MR. PLACITELLA:

11 Q. Okay. Am I correct that between  
12 1982 and 1987 there was never a three-year  
13 period when Engelhard was not involved in  
14 litigation over talc?

15 MR. FARRELL: Objection to form  
16 and foundation.

17 THE WITNESS: That's my  
18 understanding. I don't think there --  
19 I don't know the relevance of three  
20 years, but I don't know of a  
21 three-year period.

22 BY MR. PLACITELLA:

23 Q. Well, because your  
24 document-retention policy says that you have  
25 to maintain all the documents for three

1 years -- do you recall that --

2 MR. FARRELL: Objection to  
3 form --

4 BY MR. PLACITELLA:

5 Q. -- after the case is over.

6 MR. FARRELL: Objection to form,  
7 found- --

8 BY MR. PLACITELLA:

9 Q. So you violated your own  
10 document-retention policy?

11 MR. FARRELL: Objection to form,  
12 foundation, misstates the  
13 document-retention policy, beyond the  
14 scope of the notice.

15 BY MR. PLACITELLA:

16 Q. Do you recall the  
17 document-retention policy that says you have  
18 to keep the cases for three years --

19 MR. FARRELL: Objection --

20 BY MR. PLACITELLA:

21 Q. -- after it's over?

22 MR. FARRELL: Objection to form,  
23 foundation, misstates the document --

24 MR. PLACITELLA: Files; sorry.

25 But...

1 MR. FARRELL: Objection to form,  
2 foundation, misstates the  
3 document-retention policy, beyond the  
4 scope of the notice.

5 THE WITNESS: To me, that's not  
6 at all what it says.

7 BY MR. PLACITELLA:

8 Q. What does it say?

9 A. To me it says that if a document  
10 is three years old, it can be discarded. If  
11 there's a litigation hold, then you don't  
12 discard it.

13 But you don't start the, the hold  
14 period again after the litigation. If the  
15 document's three years old, you discard it  
16 if there's no hold.

17 Q. Well, certainly between 1983 and  
18 1987 Engelhard was aware that it was sued on  
19 multiple occasions; correct?

20 MR. FARRELL: Objection to form  
21 and foundation.

22 THE WITNESS: We know that there  
23 was litigation. We also know that  
24 there was at least one significant  
25 period in 1986 when there was nothing

1 going on. There may have been times  
2 in 1984 when there was nothing going  
3 on.

4 Q. During this entire period, have  
5 you seen anything in the files to indicate  
6 that a litigation hold was put on any of the  
7 evidence related to Emtal talc?

8 MR. FARRELL: Objection to form  
9 and foundation.

10 THE WITNESS: I haven't seen  
11 anything like that. I have no reason  
12 to believe that there wasn't a hold  
13 put on. I know that Arthur Dornbusch  
14 testified to that and said that he --  
15 that at the time they recognized and  
16 understood the need for litigation  
17 holds. I have no reason to believe  
18 that they didn't.

19 Q. Well, I think his testimony may  
20 be different, but we'll let that speak for  
21 itself.

22 MR. FARRELL: Objection;  
23 argumentative.

24 BY MR. PLACITELLA:

25 Q. The -- so between 1982 and 1987,

1     you think that there might have been a  
2     couple of gaps, one in '84 and one the '86,  
3     were you weren't involved in any talc  
4     lawsuits? Is that fair?

5             MR. FARRELL: Objection to form,  
6     foundation, misstates the record.

7             THE WITNESS: My understanding is  
8     that we know that in the last half of  
9     1986 there was nothing pending or  
10    active. And as I mentioned, there may  
11    have been times in 1984. Again, we  
12    just don't know a lot of details about  
13    what Engelhard knew and when they knew  
14    it with respect to the Bondo  
15    litigation.

16            Q. And the Bondo litigation was  
17    because people were suing Engelhard because  
18    Emtal talc was allegedly in the Bondo  
19    product; correct?

20            MR. FARRELL: Objection to form,  
21    foundation, misstates the record.

22            THE WITNESS: I don't know that  
23    much detail at that litigation. I  
24    know the, the basic information around  
25    it that I've discussed. But I don't

1 know all the details of what, what the  
2 claims were and what the --

3 Q. I'm just saying generally. The  
4 reason that Engelhard was in the Bondo  
5 litigation was because that -- the  
6 allegation was it was Emtal talc in the  
7 Bondo that the people used; correct?

8 MR. FARRELL: Objection to form,  
9 foundation, misstates the record.

10 THE WITNESS: Again, I don't  
11 know. I haven't read it in detail. I  
12 do know that after looking at all  
13 these cases over the last couple of  
14 weeks, there's all kinds of reasons  
15 that companies were in litigation.  
16 You're -- I agree completely that it  
17 was a, an Emtal issue. But I don't  
18 know specifically the details. I  
19 don't argue with you about it; I just  
20 don't know.

21 Q. Okay. Fair enough.

22 So it would be wrong to state  
23 that Engelhard was not involved in any  
24 talc-related litigation after the Schwartz  
25 case and before 1987 -- up to 1987; correct?

1 MR. FARRELL: Objection to form,  
2 foundation, misstates the record.

3 THE WITNESS: There was -- it was  
4 a double-negative statement.

5 BY MR. PLACITELLA:

6 Q. I'll try, I'll try to do better.

7 A. What -- that's okay. What I  
8 would say is that there, there, there was  
9 litigation between the Westfall case and  
10 1987.

11 Q. All right. And it was in  
12 multiple cases, even after the Schwartz case  
13 was resolved; correct?

14 MR. FARRELL: Objection to form,  
15 foundation, assumes facts, misstates  
16 the record.

17 THE WITNESS: We think at  
18 least -- or at least I think at least  
19 Schwartz and, and the persons in the  
20 Dynatron/Bondo. Regarding Weldon  
21 Smith, I don't know whether that was  
22 ever a case because it was incorrectly  
23 served and we just don't have a lot of  
24 information with what happened with  
25 that one.

1 Q. Okay. Can you -- do you have in  
2 front of you -- I forgot if I gave it to  
3 you -- Steinmetz 5? Do you have that, the  
4 privilege log?

5 A. I believe, yes.

6 Q. Can you pull that out, please.

7 A. I do have it.

8 Q. Okay. And can you go --

9 MR. FARRELL: One moment, please.

10 MR. PLACITELLA: Sure.

11 MR. FARRELL: This is the subset  
12 that you --

13 MR. PLACITELLA: Yes.

14 MR. FARRELL: -- you created?

15 MR. PLACITELLA: Yeah.

16 MR. FARRELL: Okay.

17 BY MR. PLACITELLA:

18 Q. And can you go to page 4, please.

19 A. Yes.

20 Q. Okay. You see there's an entry  
21 for 9/20/84?

22 A. I do, yes.

23 Q. Okay. And it talks -- and it's  
24 an entry from a J. Friedman. Do you know  
25 who he is -- or she is? I don't mean to be

1 presumptuous.

2 A. I don't know.

3 Q. -- to Arthur Dornbusch?

4 A. Yes.

5 Q. Okay. And it talks about "letter  
6 regarding Dynatron/Bondo talc litigations";  
7 do you see that?

8 A. Yes.

9 Q. So from a review of this, at  
10 least as of September 1984, Mr. Dornbusch  
11 was aware of Dynatron/Bondo talc  
12 litigations; correct?

13 MR. FARRELL: Objection to form  
14 and foundation.

15 THE WITNESS: Yes. My  
16 understanding that the Dynatron/Bondo  
17 was talking to Engelhard about some of  
18 these cases. But that's all I can  
19 glean from this information.

20 BY MR. PLACITELLA:

21 Q. So when is the first time that  
22 Dynatron/Bondo talked to Engelhard about  
23 this litigation -- about the litigation, the  
24 talc litigation?

25 MR. FARRELL: Objection to form

1 and foundation.

2 THE WITNESS: My understanding is  
3 that we don't know, that that's one of  
4 the things we're -- that we tried to  
5 find. And I'm not sure that that  
6 information exists. It may be in the  
7 privileged information and I  
8 misunderstood.

9 But my understanding is that we  
10 know that this Bondo litigation began  
11 in June of 2004 [sic]. But it's not  
12 clear when Engelhard became aware that  
13 they were going to be a party to  
14 litigation.

15 Q. But this would indicate that at  
16 least in 1984 Mr. Dornbusch was aware of the  
17 litigations; correct?

18 MR. FARRELL: Objection to form,  
19 foundation, calls for speculation.

20 THE WITNESS: I don't know what  
21 it tells him. It may be that. But it  
22 doesn't tell me anything regarding  
23 whether Mr. Dornbusch was expecting  
24 Engelhard to be part of that  
25 litigation.

1 Q. Well, if you go down a little  
2 further, you see where for 12/13/85 there's  
3 correspondence between Peter Sloane and  
4 Arthur Dornbusch related to the Smith versus  
5 Emtal litigation?

6 A. Yes.

7 Q. So what I'm trying to do is fill  
8 in the gap here. Assuming that the Schwartz  
9 final settlement was finalized in July 1984  
10 and this entry is from September 1984, do  
11 you know when in that gap between July and  
12 September, if at all -- well, strike that.  
13 Do you know whether in that gap between July  
14 and September is when the documents were all  
15 destroyed?

16 MR. FARRELL: Objection to form,  
17 foundation, misstates the record.

18 THE WITNESS: I'm sorry. So you  
19 referred me to the Sloane line. But  
20 you're going back, I presume, to the  
21 Friedman to Dornbusch,  
22 Dynatron/Bondo --

23 Q. Correct.

24 A. -- is that correct?

25 Q. Correct.

1           A.     So, I'm sorry, what was your  
2     question?

3           Q.     Well, we know the Schwartz case  
4     settled around 19 -- July of 1984 are the  
5     final documents. We've seen them. You've  
6     seen them; correct?

7           MR. FARRELL:   Objection to form,  
8     foundation, misstates the record.

9           THE WITNESS:   I'm sorry. Could  
10    you repeat it.

11   BY MR. PLACITELLA:

12          Q.     We know that the Schwartz case,  
13    the final settlement documents were around  
14    July 1984; correct?

15          MR. FARRELL:   Same objections,  
16    misstates the record.

17          THE WITNESS:   I don't know the  
18    exact date. I know it was around that  
19    time. I thought it was June of 1984.  
20    I don't know for sure.

21   BY MR. PLACITELLA:

22          Q.     Okay. And we know that Arthur  
23    Dornbusch was at least corresponding on the  
24    issue of the Dynatron/Bondo litigations in  
25    September of 1984; correct?

1 MR. FARRELL: Objection --

2 BY MR. PLACITELLA:

3 Q. -- according to the privilege  
4 log?

5 MR. FARRELL: Objection to form,  
6 foundation.

7 THE WITNESS: We know there was a  
8 letter regarding that.

9 MR. BOYLE: Hold on.

10 Objection to form and foundation.

11 BY MR. PLACITELLA:

12 Q. Okay. So do you know whether  
13 that gap between July and September is when  
14 all the evidence was destroyed --

15 MR. FARRELL: Objection --

16 BY MR. PLACITELLA:

17 Q. -- from the Westfall case?

18 MR. FARRELL: Objection to form,  
19 foundation, misstates the record.

20 THE WITNESS: So I -- first of  
21 all, I wouldn't call it destroying  
22 evidence. It was -- these were  
23 documents that were being handled  
24 pursuant to a document-retention  
25 policy.

1 I -- first of all, I don't know  
2 what that timeframe -- I don't know  
3 what the timeframe in 1984 was, if  
4 there was a gap. I don't know if it  
5 was from June to September or June to  
6 December. I have no idea. I'm not  
7 sure that we have that information or  
8 that it exists.

9 BY MR. PLACITELLA:

10 Q. So --

11 A. So I can't say that documents  
12 were discarded per the policy in that time  
13 period; no, I can't.

14 Q. Well, the final  
15 document-retention policy's from late  
16 August 1984; is that correct?

17 A. Yes.

18 Q. Okay. So are you saying that  
19 they used that document-retention policy  
20 between late August 1984 and when  
21 Mr. Dornbusch was -- had notice of the Bondo  
22 talc litigation? That's when the documents  
23 were destroyed?

24 MR. FARRELL: Objection to form,  
25 foundation, calls for speculation,

1 misstates the witness' testimony.

2 THE WITNESS: No, I'm not saying  
3 that.

4 BY MR. PLACITELLA:

5 Q. Was it done before the final  
6 document-retention policy was arrived at?

7 MR. FARRELL: Same objections.

8 THE WITNESS: What I can say is  
9 my recollection of Dornbusch's  
10 testimony was that he recalled it  
11 being that -- the information being  
12 discarded pursuant to that policy  
13 and -- whenever that policy was. But  
14 I'm not saying that it was necessarily  
15 in 1984 that it happened.

16 BY MR. PLACITELLA:

17 Q. Sometime after that?

18 MR. FARRELL: Objection to form,  
19 foundation.

20 THE WITNESS: It could have been.  
21 There was a period in 1986 when there  
22 was no litigation. There was a  
23 significant gap in the last half of  
24 1986, for example.

25 BY MR. PLACITELLA:

1 Q. Oh, so you think he waited until  
2 1986 when there were no cases; then he got  
3 rid of it all?

4 MR. FARRELL: Objection to form,  
5 foundation, argumentative.

6 THE WITNESS: I don't know. But  
7 that would be a time period when you  
8 would -- if you were trying to follow  
9 your policy, it would be a time when  
10 that could happen; yes.

11 Q. Because you couldn't do it before  
12 then, right --

13 MR. FARRELL: Objection --  
14 BY MR. PLACITELLA:

15 Q. -- because there were cases  
16 pending?

17 MR. FARRELL: Objection to form,  
18 foundation, misstates the record.

19 THE WITNESS: I'm sorry. Could  
20 you repeat.

21 BY MR. PLACITELLA:

22 Q. Couldn't destroy it before then  
23 according to the policy because there were  
24 cases pending; right?

25 MR. FARRELL: Objection to form,

1 foundation, misstates the record.

2 THE WITNESS: Again, it could  
3 have happened in 1984 at some period,  
4 at the end of 1984. Again, we don't  
5 know when Engelhard knew it was going  
6 to be a party to litigation.

7 I, I -- again, going back to that  
8 letter in the privilege log, I haven't  
9 seen what's in it. And I don't know  
10 that that letter said we're going to  
11 be part of litigation. I have no idea  
12 what it says.

13 BY MR. PLACITELLA:

14 Q. Do you believe that a review of  
15 the actual files might be able to fill in  
16 some of the gaps?

17 MR. FARRELL: Objection to form,  
18 foundation, calls for speculation.

19 THE WITNESS: I'm sorry. Which  
20 files and which gaps?

21 BY MR. PLACITELLA:

22 Q. The files of Mr. Salling,  
23 Mr. Smith, the Dynatron/Bondo files. Do you  
24 think a review of those files might fill in  
25 some of the gaps, in terms of when

1 Engelhard first had notice of those files --  
2 claims and what their involvement was?

3 MR. FARRELL: Objection to form,  
4 foundation, asked and answered.

5 THE WITNESS: Regarding the files  
6 at the end of that case, a review  
7 clearly would show when the case ended  
8 or when Engelhard's involvement in the  
9 case ended. But those are privileged.  
10 I haven't seen them, but counsel has  
11 told me that they clearly show that.

12 Regarding the beginning of the  
13 Bondo case, my understanding is that  
14 counsel had looked at all the files --  
15 they're still looking -- but they  
16 haven't been able to pin down exactly  
17 when Engelhard knew that it was going  
18 to be involved.

19 And that's one of the difficult  
20 things, is that in reconstructing  
21 these decades later, you're trying to  
22 figure out when somebody knew  
23 something; not necessarily -- there's  
24 not necessarily always a letter that  
25 says "this is the date when we knew we

1           were going to be in, in litigation";  
2           so it's hard to reconstruct some of  
3           this, is my understanding.

4       BY MR. PLACITELLA:

5           Q.     Well, my only question was:  
6       Would it -- don't you think it would be  
7       helpful to actually go into the database,  
8       pull the documents, and see what's in there  
9       in terms of when Engelhard had first notice  
10      of the cases?

11                     Don't you think that would be  
12      helpful?

13                    MR. FARRELL:  Objection to form,  
14      foundation, asked and answered, calls  
15      for speculation.

16                    THE WITNESS:  My understanding is  
17      that that's what counsel has done.  
18      And those aren't -- documents that  
19      clearly state when everything started  
20      haven't been --

21       BY MR. PLACITELLA:

22           Q.     So your understanding is that the  
23      counsel already went into the database and  
24      searched for these case and pulled the  
25      documents related to these cases?

1 MR. FARRELL: Objection --

2 BY MR. PLACITELLA:

3 Q. That's your understanding?

4 MR. FARRELL: Objection to form,  
5 foundation, misstates the witness'  
6 testimony.

7 THE WITNESS: My understanding is  
8 that they've looked. I don't know  
9 whether they've pulled documents or  
10 what they've done.

11 My preparation in this case was  
12 talking to them about this case and  
13 them informing me what they know and  
14 what we know as a company.

15 BY MR. PLACITELLA:

16 Q. So you didn't do an independent  
17 analysis? You depended on what your lawyers  
18 told you?

19 MR. FARRELL: Objection to form,  
20 foundation, misstates his testimony,  
21 asked and answered.

22 THE WITNESS: I don't have access  
23 to the database myself, so I couldn't  
24 do that. But I do feel I had a good  
25 conversation with them, and I'm

1 comfortable that I got the information  
2 that's available.

3 BY MR. PLACITELLA:

4 Q. And that's in your -- well, some  
5 of that's in your hotel room that you didn't  
6 bring with you?

7 MR. FARRELL: Objection to form.

8 THE WITNESS: Regarding  
9 Dynatron/Bondo, as I mentioned, I  
10 don't have information on that --

11 BY MR. PLACITELLA:

12 Q. Okay.

13 A. -- in writing.

14 MR. PLACITELLA: Okay. Why don't  
15 we take five, and I'll try to move  
16 things -- how much time do I have left  
17 on the record?

18 THE VIDEOGRAPHER: An hour and 11  
19 minutes.

20 The time is now 5:51 p.m. We're  
21 going off the record.

22 (Recess.)

23 THE VIDEOGRAPHER: The time is  
24 now 6:05 p.m. We are back on the  
25 record.

1 BY MR. PLACITELLA:

2 Q. Okay. In a document request,  
3 number 9, it asks for [reading]: All  
4 documents pertaining to Englehard's x-ray  
5 screening program of its Johnson mine  
6 employees, including but not limited to any  
7 document superseding or changing the program  
8 in or around 1979 and thereafter.

9 Do you see that? Let me know  
10 when you've caught up.

11 A. I do see that, yes.

12 Q. All right. Did you bring those  
13 documents with you today?

14 MR. FARRELL: Objection to form,  
15 foundation.

16 I would further note again that  
17 BASF has objected to the document  
18 request as being untimely served after  
19 the fact discovery cutoff in this case  
20 and only a week before the deposition.  
21 And we've objected to producing the  
22 documents.

23 BY MR. PLACITELLA:

24 Q. Okay. Did you bring the  
25 documents with you today?

1 A. No.

2 Q. Did you make a search for the  
3 documents?

4 MR. FARRELL: Objection to form,  
5 foundation, and the same objections I  
6 noted earlier.

7 THE WITNESS: No.

8 BY MR. PLACITELLA:

9 Q. Okay. Do you know how burdensome  
10 it would be for you to look for the  
11 document?

12 MR. FARRELL: Same objections.

13 THE WITNESS: No, I wouldn't do  
14 it. Counsel would, but I don't know.

15 BY MR. PLACITELLA:

16 Q. You could just search the  
17 database, couldn't you, and see if it's in  
18 there?

19 MR. FARRELL: Objection to form,  
20 foundation, assumes facts, misstates  
21 the record.

22 THE WITNESS: I don't know. I  
23 don't even know if they exist, so I  
24 don't know what would be involved.

25 BY MR. PLACITELLA:

1 Q. Well, what would you do if you  
2 wanted to actually see if it was there?

3 MR. FARRELL: Same objections.

4 THE WITNESS: I would depend on  
5 counsel to do it. I don't know where  
6 it would be.

7 BY MR. PLACITELLA:

8 Q. Okay. Do you know -- do you have  
9 any information about the screening program  
10 for Johnson mine employees being suspended  
11 in 1979?

12 MR. FARRELL: Objection to form,  
13 foundation, beyond the scope of the  
14 notice.

15 THE WITNESS: I don't know. I  
16 did nothing to prepare for that today.

17 BY MR. PLACITELLA:

18 Q. Topic number 5 asks for  
19 [reading]: Information provided to BASF AG  
20 or its investment bankers regarding Emtal  
21 claims in relation to BASF AG's takeover of  
22 Engelhard.

23 Do you see that?

24 A. I do see it, yes.

25 Q. What do you know about that?

1 MR. FARRELL: Objection to form,  
2 foundation.

3 I would note further our  
4 objections stated in the response to  
5 the notice based on the  
6 attorney/client privilege, the  
7 work-product doctrine, and similar  
8 privileges.

9 THE WITNESS: Again, my -- in  
10 preparing for this, I was informed  
11 that there would be a great deal of  
12 privileged information in here. I  
13 don't have anything much to add to  
14 this after discussions with the  
15 counsel.

16 BY MR. PLACITELLA:

17 Q. Well, what did you do to prepare  
18 yourself to answer this line of questions?

19 MR. FARRELL: Same objections.

20 THE WITNESS: Again, I, I talked  
21 to counsel. My impression is that the  
22 discussion of those claims would have  
23 been between attorneys within  
24 Engelhard and BASF and that they would  
25 be privileged. There's nothing that I

1 would be able to see.

2 BY MR. PLACITELLA:

3 Q. How do you know that?

4 MR. FARRELL: Objection to form,  
5 foundation.

6 BY MR. PLACITELLA:

7 Q. How do you know it was just  
8 between lawyers?

9 MR. FARRELL: Objection to form,  
10 foundation.

11 THE WITNESS: That's what -- I --  
12 this is what I learned from  
13 discussions with counsel.

14 BY MR. PLACITELLA:

15 Q. So you didn't do anything to  
16 prepare yourself to answer this topic; fair?

17 MR. FARRELL: Objection to form,  
18 foundation, misstates Mr. Steinmetz's  
19 testimony.

20 THE WITNESS: I, I spoke with  
21 counsel about it.

22 BY MR. PLACITELLA:

23 Q. Okay. Well, it says you were  
24 going to testify regarding this topic. What  
25 are you going to testify about? What do you

1 know?

2 MR. FARRELL: Objection to form,  
3 foundation, misstates the response to  
4 plaintiff's notice.

5 BY MR. PLACITELLA:

6 Q. Says [reading]: BASF will  
7 produce a representative to testify  
8 regarding this topic to the extent that the  
9 information is not privileged.

10 Do you see that?

11 A. I see it, yes.

12 Q. So what did you do to prepare  
13 yourself to respond to this topics?

14 MR. FARRELL: Objection to form,  
15 foundation, asked and answered.

16 THE WITNESS: I spoke with  
17 counsel.

18 BY MR. PLACITELLA:

19 Q. Did you ask to look at any  
20 documents that might be relevant?

21 MR. FARRELL: Objection to form,  
22 foundation. It's also subject to  
23 privilege objection.

24 THE WITNESS: No. I spoke with  
25 counsel. My understanding is that the

1 documents are privileged and I  
2 wouldn't be able to see them anyway.

3 BY MR. PLACITELLA:

4 Q. Well, it says you're ready to  
5 testify about the subject. Do you see that?

6 A. Yes.

7 Q. Subject to -- so what  
8 nonprivileged information did you  
9 investigate in order to testify about the  
10 subject?

11 MR. FARRELL: Objection to form,  
12 foundation, asked and answered,  
13 argumentative.

14 THE WITNESS: I don't have  
15 anything nonprivileged to discuss.

16 BY MR. PLACITELLA:

17 Q. Did you speak to any witnesses to  
18 see if there was information in possession  
19 of BASF that was not privileged?

20 MR. FARRELL: Objection to form,  
21 foundation, asked and answered.

22 THE WITNESS: No.

23 BY MR. PLACITELLA:

24 Q. So just so we're clear, other  
25 than talking to your lawyer, even though the

1 response is that you'll be here to talk  
2 about the topic, you know nothing and you  
3 did nothing to prepare; correct?

4 MR. FARRELL: Objection to form,  
5 foundation, misstates Mr. Steinmetz's  
6 testimony, argumentative, harassing  
7 the witness, asked and answered.

8 THE WITNESS: What I did to  
9 prepare was I spoke with counsel about  
10 that topic and determined that there's  
11 nothing that I can add to this.

12 BY MR. PLACITELLA:

13 Q. Can you take out Exhibit 221,  
14 please.

15 A. Yes.

16 Q. Okay. And --

17 MR. FARRELL: One moment, please.  
18 What is that?

19 MR. PLACITELLA: 221 is the  
20 interrogatory answers he certified.

21 THE WITNESS: This.

22 BY MR. PLACITELLA:

23 Q. Okay. In, in 221, just for a  
24 frame of reference, interrogatory  
25 number 1 -- which we talked about a little

1 bit before -- is about settlements with  
2 Emtal claimants; correct?

3 MR. FARRELL: Objection to form.

4 THE WITNESS: It is asking to  
5 identify settlements, yes.

6 BY MR. PLACITELLA:

7 Q. Okay. And in -- on page 3 you  
8 state [reading]: The prevalence of alleged  
9 injuries varied by jurisdiction, by lawyer,  
10 by time, and based on other factors. A  
11 portion of the plaintiffs alleged they  
12 developed lung cancer or mesothelioma due to  
13 asbestos or asbestos-containing products  
14 distributed or used by dozens of different  
15 entities.

16 Do you see that?

17 A. I'm sorry. I'm not sure where  
18 you are.

19 Q. Page 3.

20 A. Yes.

21 Q. Where it says -- you see the  
22 paragraph says "further responding"?

23 A. Oh, okay. Yes, I see that.

24 Q. You see the highlighted section?

25 A. Okay. And you began a little bit

1 above that. Yes, okay.

2 Q. What's the factual basis for that  
3 information --

4 MR. FARRELL: Objection --

5 BY MR. PLACITELLA:

6 Q. -- that you -- where did you get  
7 those facts?

8 MR. FARRELL: Objection to form,  
9 foundation, beyond the scope of the  
10 notice.

11 THE WITNESS: As I mentioned,  
12 I've looked at not the case files but  
13 dozens of instances of litigation over  
14 the course of the past two weeks in  
15 preparing for this. And, you know  
16 we've looked at specific cases  
17 involved in this litigation, the six  
18 plaintiffs that were named in this  
19 litigation; looking at the Bevan 30,  
20 that, that printout, that database  
21 summary or, or condensation or the  
22 random selection of databases pulled  
23 out of the Bevan database.

24 I've looked at other information  
25 regarding the National Tire Workers

1           Litigation Project. So I've looked at  
2           a lot of different cases over the  
3           course of the last two weeks.

4       BY MR. PLACITELLA:

5           Q. But when you answered the  
6           interrogatories, what was the factual basis  
7           for providing that information? Where did  
8           you get that?

9           MR. FARRELL: Objection to form,  
10          foundation, beyond the scope of the  
11          notice, asked and answered.

12          THE WITNESS: Oh, well, in  
13          addition to that, of course, over the  
14          course of the last two or three years,  
15          we've talked about a lot of cases.  
16          And my understanding from those is  
17          that each case is different and  
18          there's always a different set of  
19          claims and defenses and ways of  
20          settling cases.

21       BY MR. PLACITELLA:

22          Q. Well, you say the prevalence  
23          alleged -- of alleged injuries varied by  
24          jurisdiction and by lawyer and by time,  
25          where did you get that?

1 MR. FARRELL: Objection to form,  
2 foundation, beyond the scope, asked  
3 and answered.

4 THE WITNESS: As I mentioned,  
5 it's obviously something I've learned  
6 over the last couple of weeks. And I  
7 can't name them case-for-case; but  
8 over the last couple of years, just  
9 the Fields case and the Sampson case  
10 are a good example of how they're very  
11 different from each other in these  
12 aspects.

13 BY MR. PLACITELLA:

14 Q. On page 5 you indicate that  
15 information about the amounts paid in  
16 settlement is available in the database  
17 produced -- and you give me the number.

18 Do you see that?

19 A. Yes.

20 Q. So is it your testimony today  
21 that I should be able to go into that  
22 database and it will tell me how much each  
23 client settled for if they settled?

24 MR. FARRELL: Objection to form,  
25 foundation, misstates the

1           interrogatory response. You only read  
2           part of a sentence in an interrogatory  
3           response and misstated it. It's also  
4           beyond the scope of the notice.

5                   MR. PLACITELLA: It's not.

6 BY MR. PLACITELLA:

7           Q. Go ahead.

8           A. So as I've testified a couple of  
9           times today, some of that information is in  
10          the database. As I've mentioned earlier,  
11          the database isn't complete. That kind of  
12          information does not exist for every case.

13                   So in order to get that  
14          information for every case, you'd have to go  
15          to the files, to records, to any number of  
16          places to try to pull that information out.  
17          I'm not sure where it would all exist. It  
18          would take work to find it all.

19           Q. You say in the last sentence  
20          [reading]: Overall, Engelhard and BASF paid  
21          more than 1.5 million in settlements to past  
22          plaintiffs. Most settlements were paid or  
23          reimbursed by Engelhard's insurers.

24                   Do you see that?

25           A. I do.

1 Q. Where did that come from?

2 MR. FARRELL: Objection to form,  
3 foundation, beyond the scope of the  
4 notice.

5 THE WITNESS: That was prepared  
6 by counsel. And I'm sure that they  
7 did research into their records to  
8 find what they could on that. I don't  
9 know the source of that.

10 BY MR. PLACITELLA:

11 Q. So you didn't do anything to  
12 independently verify the accuracy of that  
13 statement?

14 MR. FARRELL: Objection to form,  
15 foundation, misstates Mr. Steinmetz's  
16 testimony, argumentative, beyond the  
17 scope of the notice.

18 THE WITNESS: No. I was  
19 comfortable that counsel was accurate  
20 in what they wrote.

21 BY MR. PLACITELLA:

22 Q. Do you know where they got it  
23 from?

24 MR. FARRELL: Same objections.

25 THE WITNESS: No.

1 BY MR. PLACITELLA:

2 Q. Did you ask?

3 MR. FARRELL: Same objections,  
4 beyond the scope of the notice.

5 THE WITNESS: No.

6 BY MR. PLACITELLA:

7 Q. So you certified answers to  
8 interrogatories in this case, you provided  
9 information that you got only from your  
10 lawyers, and you never asked where it came  
11 from?

12 MR. FARRELL: Objection to form,  
13 foundation, beyond the scope of the  
14 notice, argumentative, asked and  
15 answered, misstates Mr. Steinmetz's  
16 testimony.

17 THE WITNESS: I didn't ask them.  
18 I'm comfortable with the responses  
19 that they gave me. If I had had  
20 concerns about it or had questions  
21 about it, I would have asked them.

22 BY MR. PLACITELLA:

23 Q. Well, how do you know if it's  
24 true if you don't check yourself?

25 MR. FARRELL: Objection to form,

1 foundation, asked and answered,  
2 argumentative, beyond the scope of the  
3 notice.

4 THE WITNESS: Because I trust  
5 them.

6 BY MR. PLACITELLA:

7 Q. Well, weren't you the one to tell  
8 me before that lawyers advocate all the time  
9 and the stuff in the letters you can't  
10 necessarily depend upon? So why didn't you  
11 just look and verify it yourself?

12 MR. FARRELL: Objection to form,  
13 foundation, beyond the scope,  
14 argumentative, harassing the witness,  
15 asked and answered.

16 MR. PLACITELLA: Withdraw the  
17 last question.

18 BY MR. PLACITELLA:

19 Q. Top of page 6. You state with  
20 respect to the Ashton affidavit [reading]:  
21 Engelhard's counsel sent Ashton's expert  
22 affidavit to the plaintiff's counsel in some  
23 but not all cases.

24 Do you see that?

25 A. Yes.

1 Q. What's the basis for that  
2 statement?

3 MR. FARRELL: Objection to form.

4 THE WITNESS: Talking to counsel  
5 on this -- first of all, there are  
6 thousands of cases. And my  
7 understanding is we don't have  
8 thousands of letters. So...

9 In addition, the only -- with  
10 respect to these specifically -- for  
11 example, we know that a letter was  
12 sent to Mr. Bevan. We also know that  
13 Mr. Bevan continued to initiate  
14 litigation. There were hundreds of  
15 cases from him, but we don't have  
16 hundreds -- examples of hundreds of  
17 letters that were sent to him.

18 So intuitively it makes sense  
19 that we didn't send one every single  
20 time. We have -- I have no reason to  
21 believe that we did. I don't --  
22 haven't seen any, any proof that we  
23 had, did send one in every case.

24 BY MR. PLACITELLA:

25 Q. So do you believe that you've

1 reviewed all of the letters that were sent  
2 to all the lawyers asking for dismissal  
3 based upon the Ashton affidavit?

4 MR. FARRELL: Objection to form  
5 and foundation.

6 THE WITNESS: No, not at all. In  
7 fact, I don't even know how many there  
8 were like that because there are so  
9 many we have to -- as I mentioned  
10 before, we'd have to look at every  
11 single one.

12 BY MR. PLACITELLA:

13 Q. So just so we're clear, as you  
14 sit here today, you've not seen all the  
15 letters referencing the Ashton affidavit nor  
16 did you request them; fair?

17 MR. FARRELL: Objection to form,  
18 foundation, misstates Mr. Steinmetz's  
19 testimony.

20 THE WITNESS: I haven't seen all  
21 the letters. I don't know how many  
22 were written. I don't know that  
23 anybody knows how many were written  
24 for sure, but I haven't seen them all.

25 BY MR. PLACITELLA:

1 Q. Did you ask to see them all?

2 MR. FARRELL: Same objections.

3 THE WITNESS: No.

4 BY MR. PLACITELLA:

5 Q. In interrogatory number 3 it asks  
6 that you [reading]: Identify all cases  
7 against Engelhard or BASF where the  
8 plaintiff or claimant or her/his  
9 representative alleged exposure to Emtal  
10 talc prior to 2010 that were dismissed  
11 without payment.

12 Do you see that?

13 A. Yes.

14 Q. And in your response to that, you  
15 refer the plaintiffs to the database;  
16 correct?

17 MR. FARRELL: Objection to form,  
18 foundation, misstates the response.

19 THE WITNESS: That's one of the  
20 things that we refer to; yes.

21 BY MR. PLACITELLA:

22 Q. And did you actually look at the  
23 database and see a listing of all the  
24 plaintiffs that were, that were -- brought  
25 cases that were dismissed without payment?

1 MR. FARRELL: Objection to form,  
2 foundation, asked and answered.

3 THE WITNESS: I didn't do that.  
4 And I was under the understanding, of  
5 course, that you have the database and  
6 could have generated that as well.

7 BY MR. PLACITELLA:

8 Q. Well, ours doesn't work. That's  
9 why I'm asking the question.

10 MR. FARRELL: Objection to form,  
11 foundation. Misstates the record,  
12 argumentative.

13 BY MR. PLACITELLA:

14 Q. Okay. So do you know that this  
15 database actually works to do that? Have  
16 you seen it done?

17 MR. FARRELL: Same objections.

18 THE WITNESS: I, I saw in the, in  
19 the demonstration I saw the generation  
20 of a list of plaintiffs and using  
21 different records and putting  
22 different things together; yes.

23 BY MR. PLACITELLA:

24 Q. Oh, so you've actually seen a  
25 list of plaintiffs and whether they were

1 paid or not?

2 MR. FARRELL: Objection to form,  
3 foundation.

4 THE WITNESS: No. I said I've  
5 looked at, at a report where we listed  
6 a group of, of plaintiffs and then  
7 looked at other information related to  
8 that. I don't know specifically that  
9 we looked for this one thing.

10 BY MR. PLACITELLA:

11 Q. Well, does -- can you look at the  
12 database -- because that's what you're  
13 saying here. Can you look at the database  
14 and get the plaintiffs, a list of plaintiffs  
15 and whether they were paid or not?

16 MR. FARRELL: Objection to form,  
17 foundation, asked and answered.

18 THE WITNESS: I think I've talked  
19 about this a couple of times earlier.  
20 But that kind of information is in  
21 there in some of the tables. Again, I  
22 don't know it by heart and I don't  
23 know everything.

24 But to the extent that that kind  
25 of information is in the database, it

1           could be done.

2       BY MR. PLACITELLA:

3           Q.    Okay.

4           A.    As I mentioned before, much of  
5   the database isn't completed because it  
6   depended -- its completion depended on who  
7   was working on the case.

8           Q.    I'm not trying to harass you on  
9   this. I'm just trying to understand what's  
10   there, okay --

11          A.    I understand.

12          Q.    -- because we're having a hard  
13   time; okay?

14          A.    I understand.

15          Q.    Okay. Can you look at  
16   Exhibit 63? Did I give you that? I think I  
17   did. Yes, I did.

18          A.    Yes, I have it.

19          Q.    Okay.

20               MR. FARRELL: Which one is that?

21               THE WITNESS: The, the  
22   interrogatory answers.

23               MR. FARRELL: Is that the one we  
24   were just looking at or...?

25               MR. PLACITELLA: No, it's a

1 different one, Exhibit 63.

2 THE WITNESS: I believe the first  
3 one.

4 BY MR. PLACITELLA:

5 Q. Do you have that in front of you?

6 A. I do.

7 Q. So interrogatory number 1 asks  
8 that you [reading]: Identify all the  
9 documents in your possession, custody, or  
10 control that identify or can be used to  
11 identify members of or potential members of  
12 the proposed classes.

13 Do you see that?

14 A. Yes, I do.

15 Q. And one of the references that  
16 you supply is the Cahill -- the databases  
17 that Cahill Gordon prepared in connection  
18 with prior litigation. Do you see that?

19 Right down below.

20 A. Yes, I see that.

21 Q. Is that the same database that  
22 we've been just talking about, the one that  
23 start FR and has a bunch of zeros and ends  
24 with three?

25 MR. FARRELL: Objection to form.

1 THE WITNESS: I'm not sure of  
2 that. My understanding is that  
3 it's -- the databases that we  
4 supplied, the EC database, which was a  
5 database of Cahill litigation related  
6 to Engelhard Corporation and then  
7 a second smaller database related to  
8 the Bevan litigation.

9 BY MR. PLACITELLA:

10 Q. Okay. But I'm not asking about  
11 the Bevan litigation. This database, is it  
12 the same that you're referring here? Is it  
13 the same database we've been talking  
14 about --

15 A. Yes.

16 Q. -- all day?

17 MR. FARRELL: Objection to form.

18 THE WITNESS: Yes. It says  
19 "databases" so --

20 BY MR. PLACITELLA:

21 Q. Okay.

22 A. -- I imagine we're referring to  
23 both when we prepared this.

24 Q. Okay. And it's your  
25 understanding that you can actually run a

1 query in that database and get a list of all  
2 the potential class members in this case?

3 MR. FARRELL: Objection to form,  
4 foundation, misstates the database and  
5 the record and Mr. Steinmetz's  
6 testimony.

7 BY MR. PLACITELLA:

8 Q. I'm just looking at your answer.

9 A. Yeah, I think the problem with  
10 your question is that all the members of the  
11 class, we don't know who they are. There  
12 could be thousands. There could be ten. We  
13 don't know. All the, all that information  
14 isn't in the database. It's not in any one  
15 database.

16 And that's why it's so hard to  
17 provide all this information because you  
18 have to go to each file to see what the,  
19 what that facts were in each case.

20 Q. All right. You've made that  
21 clear. What I'm trying to find out is: Of  
22 the information that's in that database, you  
23 should be able to run a query and you should  
24 get a list of all the plaintiffs, whoever  
25 sued Engelhard in a talc case. That's in

1 the database --

2 MR. FARRELL: Objection --

3 BY MR. PLACITELLA:

4 Q. -- correct?

5 MR. FARRELL: Objection to form,  
6 foundation, misstates the record and  
7 the database.

8 THE WITNESS: Whatever's in the  
9 database, if you know how to use  
10 Access and use the reporting function,  
11 you can pull out the records that are  
12 in the database, yes --

13 BY MR. PLACITELLA:

14 Q. Okay.

15 A. -- whatever they may be, whatever  
16 records they may be associated with.

17 My point is that it won't tell  
18 you what the class is because the database  
19 is incomplete --

20 Q. Fair enough.

21 A. -- and the information in the  
22 database wouldn't tell you whether or not  
23 something belonged in any kind of a class.

24 Q. Is it your understanding that all  
25 of the data in the database concerning the

1 plaintiffs are linked? So in other words,  
2 if you go to Mr. Jones' file, you should be  
3 able to see everything in the database on  
4 Mr. Jones' file?

5 MR. FARRELL: Objection to form,  
6 foundation.

7 THE WITNESS: My understanding is  
8 that's how Access works. I don't know  
9 whether what you said is absolutely  
10 correct. I would have to defer to  
11 somebody who's familiar with Access  
12 and the database to answer that.

13 BY MR. PLACITELLA:

14 Q. But your understanding is I could  
15 figure -- I could -- if I wanted to see  
16 everything in the database on Daniel  
17 Steinmetz, assuming you were a claimant, I  
18 should be able to search "Daniel Steinmetz"  
19 and get all the information that's in the  
20 database related to Daniel Steinmetz;  
21 correct?

22 MR. FARRELL: Objection to form  
23 and foundation.

24 THE WITNESS: I believe that's  
25 how I understand Access, but I'm not

1 an expert in Access. That's...

2 BY MR. PLACITELLA:

3 Q. Okay. Now, in interrogatory  
4 number 4...

5 MR. FARRELL: Which -- I'm sorry.

6 I think there were two sets we were  
7 talking about. Which --

8 MR. PLACITELLA: Same one,  
9 Exhibit 63. That's what I'm on now.

10 BY MR. PLACITELLA:

11 Q. You list various people and  
12 whether they were aware of the evidence in  
13 the Westfall case. Do you see that?

14 A. Yes.

15 Q. Okay. What's the factual basis  
16 for that?

17 MR. FARRELL: Objection to form,  
18 foundation, beyond the scope of the  
19 notice.

20 THE WITNESS: The factual basis  
21 that these were internal lawyers for  
22 Engelhard or BASF whose work during  
23 certain periods of time related to  
24 personal-injury litigation based on  
25 alleged exposure to talc.

1 BY MR. PLACITELLA:

2 Q. Right. But you said, for  
3 example, Dornbusch knew, Halket knew,  
4 Hemstock knew, Triglia knew -- or, I'm  
5 sorry, Halket and Dornbusch knew; but you  
6 say that Hassett, Fliegel, and Greenberg and  
7 Peters didn't know. Where -- what's the  
8 basis for that?

9 MR. FARRELL: Objection to form,  
10 foundation, beyond the scope of the  
11 notice.

12 THE WITNESS: I'm sorry. Aware  
13 of what? I'm sorry, what your  
14 question -- I'm not even sure what  
15 your question is.

16 BY MR. PLACITELLA:

17 Q. Okay. So the interrogatory asks  
18 what BASF personnel was aware of the  
19 testimony from the Westfall case and the  
20 documents produced in the Westfall case. Do  
21 you see that, right before it on number  
22 four?

23 A. Yes.

24 Q. Okay. And your response --

25 A. Okay.

1 Q. -- on the next page is some  
2 people were and some people weren't?

3 A. Oh, I understand. Yes, that's  
4 correct.

5 Q. My question is: What is the  
6 factual basis for that?

7 MR. FARRELL: Objection to form,  
8 foundation, beyond the scope of the  
9 notice.

10 THE WITNESS: The factual basis  
11 would come from a -- again, I didn't  
12 write this myself. It came from an  
13 overall review of all of the  
14 information available and a knowledge  
15 of all the information available as  
16 well as from testimony and  
17 depositions.

18 Dornbusch knew, obviously,  
19 because he was present in the  
20 depositions. Halket would have known  
21 because he was also present at some of  
22 the depositions, as I understand it.

23 With respect to Hassett, he  
24 testified that he didn't know anything  
25 about it, had never seen it.

1                   Fliegel, I have -- we have no  
2                   reason to believe that he had ever  
3                   seen it.

4                   Jonathan Greenberg and John  
5                   Peters, these were people who came  
6                   after the information was allegedly or  
7                   was presumably discarded pursuant to  
8                   the document-control policy.

9       BY MR. PLACITELLA:

10           Q.     Well, you remember Mr. Hassett  
11           testifying that he, in fact, did see the  
12           Westfall transcripts, that they dug them up  
13           in 2004?

14                   MR. FARRELL:   Objection to form,  
15                   foundation, misstates Mr. Hassett's  
16                   testimony.

17                   THE WITNESS:   I believe  
18                   Mr. Hassett's testimony was that he  
19                   had not seen them until the recent  
20                   Third Circuit Court opinion.

21                   My, my recollection is that  
22                   Sullivan, when he recovered that  
23                   information, said -- in his deposition  
24                   said that when he recovered that  
25                   information, he sent it to directly to

1 Mr. Dembrow.

2 BY MR. PLACITELLA:

3 Q. So you -- as you sit here today,  
4 your testimony is that Mr. Hassett was never  
5 aware of the Westfall depositions until he  
6 read the Third Circuit decision? That's  
7 your testimony?

8 MR. FARRELL: Objection to form,  
9 foundation, asked and answered, beyond  
10 the scope.

11 THE WITNESS: That's my  
12 understanding -- that's my  
13 recollection of his testimony. I  
14 don't know if it was the Third Circuit  
15 or at some other point that he learned  
16 of it. But my understanding is that  
17 he didn't know about it until after  
18 2009.

19 BY MR. PLACITELLA:

20 Q. Okay. So when you say that  
21 Fliegel/Greenberg/Peters didn't know about  
22 it, that's based on an assumption or based  
23 on an actual investigation?

24 MR. FARRELL: Objection to form,  
25 foundation, argumentative, asked and

1           answered, beyond the scope of the  
2           notice.

3                   THE WITNESS: Well, this is based  
4           on Dornbusch's testimony as well as  
5           Hassett's testimony; Dornbusch saying  
6           that the information was discarded per  
7           the policy; the fact that these people  
8           were involved after that time period;  
9           and as well as Michael Hassett's  
10          testimony that people at Engelhard  
11          other than Dornbusch just didn't know  
12          about the information.

13       BY MR. PLACITELLA:

14               Q.    Okay. Go to 13. Number 13 asks  
15    for who at BASF was aware of the Martin  
16    case. And you indicate that Arthur  
17    Dornbusch and Michael Hassett were aware;  
18    correct?

19                   MR. FARRELL: Objection to form.

20                   THE WITNESS: Yes, we state that.

21       BY MR. PLACITELLA:

22               Q.    Okay. And what's, what's the  
23    basis for that?

24                   MR. FARRELL: Objection to form,  
25           foundation, beyond the scope of the

1 notice.

2 THE WITNESS: Again, I didn't  
3 necessarily prepare to answer all  
4 these questions regarding this. I  
5 don't remember everything that I've  
6 seen over the last two weeks.

7 My recollection is that both  
8 Dornbusch and Hassett testified that  
9 they were aware of the Martin case.

10 BY MR. PLACITELLA:

11 Q. But you answered these before  
12 they testified. When you answered these,  
13 what was the basis for that statement?

14 MR. FARRELL: Same objections,  
15 beyond the scope of the notice.

16 THE WITNESS: As I mentioned,  
17 this was prepared -- I -- as I  
18 mentioned -- or as I have mentioned,  
19 this, this was put together by  
20 counsel.

21 MR. BOYLE: Chris, could you  
22 clarify for me, what's the documents  
23 you're showing this witness right now?

24 MR. PLACITELLA: Answers to  
25 interrogatories sworn to by the

1 witness.

2 MR. BOYLE: In this case?

3 MR. PLACITELLA: Correct.

4 MR. FARRELL: Objection;  
5 misstates what the interrogatories are  
6 and the witness' verification.

7 THE WITNESS: And, I'm sorry,  
8 I've lost my train of thought. Could  
9 you repeat the question because I just  
10 kind of lost --

11 BY MR. PLACITELLA:

12 Q. Where'd you get the information  
13 that you verified in response to this  
14 interrogatory answer? Where did you get it?

15 MR. FARRELL: Objection to form,  
16 foundation, beyond the scope of the  
17 notice, asked and answered.

18 THE WITNESS: This information  
19 would have come from counsel. What I  
20 was going to say is -- as I was going  
21 to say, so much information came in  
22 the last couple of weeks, I don't know  
23 if I talked specifically with counsel  
24 what the basis for this was or where  
25 it came from. So I just don't

1 remember that.

2 I do know that both of them  
3 testified, but I don't know where that  
4 came from originally.

5 BY MR. PLACITELLA:

6 Q. Okay. It didn't come from you?

7 MR. FARRELL: Objection to form,  
8 argumentative.

9 THE WITNESS: That's correct. I  
10 did not write this; yes.

11 BY MR. PLACITELLA:

12 Q. And you didn't do anything to  
13 verify whether it was accurate or not before  
14 signing the interrogatories; correct?

15 MR. FARRELL: Objection to form,  
16 foundation, misstates the record, and  
17 misstates Mr. Steinmetz's testimony.

18 THE WITNESS: As I've said, if I  
19 had been concerned, I would have  
20 contacted counsel. I have faith that  
21 they're preparing these accurately.

22 BY MR. PLACITELLA:

23 Q. So basically you just signed the  
24 verification when you answered these  
25 interrogatories and conducted no independent

1 investigation yourself to verify what was in  
2 there was true; true?

3 MR. FARRELL: Objection to form,  
4 foundation, argumentative, asked and  
5 answered, beyond the scope of the  
6 notice.

7 THE WITNESS: In the case of  
8 these, I don't think I contacted them  
9 to ask any question.

10 BY MR. PLACITELLA:

11 Q. Well, is there a single  
12 interrogatory response that you swore to  
13 here that you did your own investigation to  
14 verify whether the information was true?

15 MR. FARRELL: Same objections.

16 THE WITNESS: You mean both of  
17 the interrogatories involved in  
18 this --

19 BY MR. PLACITELLA:

20 Q. Yeah.

21 A. No, I did not.

22 Q. So when you state that the facts  
23 set forth in said responses are true and  
24 correct to the best of my knowledge,  
25 information, and belief, that's not based

1 upon anything other than what the lawyers  
2 put in the interrogatory answers; correct?

3 MR. FARRELL: Objection to form,  
4 foundation, asked and answered, beyond  
5 the scope of the notice, harassing the  
6 witness.

7 THE WITNESS: I'm, I'm completely  
8 comfortable with this verification.  
9 Yes, that was my belief, that it was  
10 accurate and truthful, I have no  
11 problem with that.

12 BY MR. PLACITELLA:

13 Q. But you didn't know -- just so  
14 we're clear, and then I'll stop.

15 The sole basis for your providing  
16 these answers was based on what the lawyers  
17 told you and put in the responses; correct?

18 MR. FARRELL: Objection to form,  
19 foundation, beyond the scope of the  
20 notice. You're harassing the witness.  
21 The question has been asked and  
22 answered approximately a half dozen  
23 times, if not more.

24 THE WITNESS: So I've worked with  
25 this group for a long time. I have

1 complete confidence in what they  
2 write. In, in this case I was  
3 completely comfortable.

4 BY MR. PLACITELLA:

5 Q. So the answer is what?

6 A. I'm completely comfortable with  
7 what they wrote, and I signed it comfortably  
8 and, and believing that it was all true and  
9 accurate.

10 Q. Okay. Now, have you testified  
11 before under oath that you don't know what  
12 happened to the R&D documents after  
13 Dr. Hemstock sent out his March 7th, 1984  
14 memo?

15 MR. FARRELL: Objection to form,  
16 foundation, misstates' Mr. Steinmetz's  
17 prior testimony, beyond the scope of  
18 the notice.

19 THE WITNESS: I, I don't remember  
20 all my prior testimony. I'm sure  
21 you've got some example of it.  
22 I've evolved -- you know, this is all  
23 evolving. I learn things from each  
24 new case. I don't know what you're  
25 referring to, but I'll be happy to

1 address it.

2 MR. PLACITELLA: Transcript from  
3 the Fields case.

4 MR. FARRELL: Do you have a copy  
5 for me?

6 MR. PLACITELLA: I don't; sorry.  
7 You can take time. I'll tell you what  
8 page I'm going to ask him about. It's  
9 a lot to carry.

10 MR. FARRELL: Can I have it,  
11 please.

12 THE WITNESS: Sure.

13 MR. FARRELL: Thanks.

14 Which pages would you like me to  
15 look at?

16 MR. PLACITELLA: I'll tell you  
17 right now, try to shortcut it.

18 Let's see if we can short-circuit  
19 it. I'm going to ask him about 208  
20 and 209.

21 MR. BOISE: Are you going to  
22 publish it?

23 MR. PLACITELLA: I am. I'm going  
24 to give Peter a chance to look at  
25 it first.

1 MR. BOISE: You're not going to  
2 give me a chance to look at it?

3 MR. PLACITELLA: I'm sorry. I  
4 just didn't want to put it up until he  
5 had a chance to look at it. But sure.

6 (Discussion held off the  
7 stenographic record.)

8 MR. PLACITELLA: I'll try to blow  
9 it up for you, Barry.

10 MR. FARRELL: Is it just the  
11 stuff you highlighted in this?

12 MR. PLACITELLA: Yeah. If  
13 there's something else. I'm happy to  
14 do it.

15 (Discussion held off the  
16 stenographic record.)

17 (Steinmetz Exhibit 3 was marked  
18 for identification.)

19 BY MR. PLACITELLA:

20 Q. I'm going to show you -- because  
21 I want to be fair about this -- 208 and 209.  
22 If you can just take a look and that and  
23 anything you want to look at around it, and  
24 I want to check one other thing while you're  
25 doing that.

1           A.    I've pretty much read it on the  
2   screen.

3           Q.    Okay. I want to make sure I'm  
4   right about this.

5                    So, yeah, look at page 181 as  
6   well, and whatever you want to look at  
7   around that. And I'll put it up for  
8   everybody else.

9                    Did you look at it?

10          A.    Yes.

11          Q.    Okay. So in the Fields case you  
12   were questioned for like a whole day about  
13   the various testing documents that were  
14   produced; do you recall that?

15                   MR. FARRELL: Objection to form.

16                   THE WITNESS: This was two years  
17   ago. But I generally recall that,  
18   yes.

19   BY MR. PLACITELLA:

20          Q.    Okay. And when -- Mr. Bosl, on  
21   page 181, asked you [reading]: Are you able  
22   to testify or do you have any knowledge  
23   about whether all the documents collected in  
24   March of 1984 are still available today?

25                   And your answer is [reading]:

1 Since I don't know what was collected in  
2 1984, I don't know whether they're  
3 available.

4 Do you see that?

5 MR. FARRELL: Objection to form,  
6 foundation, beyond the scope of  
7 today's notice. This topic and  
8 subject matter had been designated and  
9 was withdrawn as a topic by the  
10 plaintiffs.

11 MR. PLACITELLA: Okay.

12 MR. FARRELL: Beyond the scope.

13 THE WITNESS: I, I see that. And  
14 this is a -- like you said, this is a  
15 three- or four-hour deposition  
16 testimony transcript.

17 BY MR. PLACITELLA:

18 Q. Right.

19 A. I'd have to read the whole thing  
20 to comment. I mean, you're right; that's  
21 what I said there.

22 Q. Okay.

23 A. I don't disagree at all.

24 Q. And then you were asked about it  
25 again on page 208; correct?

1           A.    Yes.   And I'd even have to look  
2   back and see what they were referring to  
3   when they talked about the document  
4   retrieval in 1984.

5           Q.    Says:

6                   Am I correct that we looked at  
7           the memorandum earlier regarding the  
8           document retrieval in 1984, you don't  
9           know what happened to the documents  
10          that were obtained at that time until  
11          the documents have now been produced  
12          to the present; correct?

13                  Your answer:

14                  We don't know where they were  
15          ultimately retrieved from, but I don't  
16          know the chain of custody of those  
17          documents.

18                  Question: You can't say as you  
19          sit here today that every single  
20          document that was collected in 1984  
21          was part of the production in this  
22          case, can you?

23                  You asked him to repeat it.

24                  And he says:

25                  Yeah. Are you able to say that

1 the documents, that all of the  
2 documents collected in 1984 were part  
3 of the collection that was produced in  
4 this case?

5 And your answer was:

6 I can't say what was collected in  
7 1984, so I don't know.

8 Do you recall giving that  
9 testimony?

10 MR. FARRELL: Objection to form,  
11 foundation. As I noted earlier, this  
12 topic was withdrawn by the plaintiffs  
13 in this notice. It is therefore  
14 beyond the scope of this notice. It  
15 may well have been beyond the scope of  
16 the notice in the Fields case from two  
17 years ago. And I would further note  
18 that Mr. Steinmetz has subsequently  
19 given testimony --

20 MR. PLACITELLA: Please don't do  
21 this.

22 MR. FARRELL: -- to the  
23 plaintiff's counsel in this case over  
24 the course of the three days in the  
25 Sampson matter on this subject matter

1 after his Fields testimony --  
2 testimony in the Fields case.

3 MR. PLACITELLA: Okay. I'm not  
4 acquiescing to any of the things you  
5 state.

6 BY MR. PLACITELLA:

7 Q. Do you recall providing that  
8 testimony?

9 MR. FARRELL: Mr. Placitella, are  
10 you disputing --

11 MR. PLACITELLA: I'm not  
12 answering your questions.

13 MR. FARRELL: -- that you and I  
14 personally met-and-conferred about the  
15 designated issues for this deposition,  
16 discussed the documents collected  
17 pursuant to the March 7th, 1984 memo?

18 You stated during that  
19 meet-and-confer discussion that if  
20 Mr. Steinmetz testified about the  
21 subject in his Sampson deposition last  
22 summer, that you wouldn't ask him  
23 about those questions again.  
24 Plaintiff subsequently withdrew that  
25 topic from their notice. And now

1 we're here at the deposition and  
2 you're asking him questions on the  
3 subject matter.

4 BY MR. PLACITELLA:

5 Q. Is that an accurate statement,  
6 sir?

7 MR. FARRELL: Same objections as  
8 I've noted.

9 THE WITNESS: I'm sorry. Is what  
10 an accurate statement?

11 BY MR. PLACITELLA:

12 Q. That you don't know what was  
13 collected in 1984, so you don't know if it  
14 was all produced?

15 MR. FARRELL: Objection to form,  
16 foundation, beyond the scope of the  
17 notice. The witness has previously  
18 testified on this subject matter in  
19 the Sampson case.

20 THE WITNESS: So this was --  
21 first of all, I don't even recall  
22 this. I don't dispute it because it's  
23 in front of me. This was two years  
24 ago.

25 I was prepared differently for

1           that case. As counsel said, I don't  
2           even know if this was in the scope of  
3           the notice at that time. I don't know  
4           if I was even prepared to answer that.  
5           And it was true that I didn't know at  
6           this time.

7                   Obviously, I've prepared a lot  
8           more for different cases since then  
9           and I know more now. So I'm not at  
10          all surprised that I've evolved and I  
11          know things differently than I did  
12          then.

13          Q. So I'm going to make this very  
14          short. Do you still adopt all of the  
15          testimony that you provided in the Sampson  
16          case while we were here for three days?

17                   MR. FARRELL: Can I have the  
18          question again, please.

19                   (The court reporter read back the  
20          pending question.)

21                   MR. FARRELL: Objection to form,  
22          foundation, beyond the scope of  
23          today's notice.

24                   THE WITNESS: I, I would have to  
25          look at it all. I know that I've even

1           learned more in the last year since  
2           that Sampson case. So I'd have to  
3           look at it all.

4           MR. PLACITELLA: Okay. How much  
5           time have I got there?

6           THE VIDEOGRAPHER: 24 minutes.

7           MR. PLACITELLA: Okay. I'm going  
8           to finish in enough time to give Barry  
9           his shot.

10          MR. BOISE: I cede my time back  
11          to you, Chris.

12          MR. PLACITELLA: Okay.

13   BY MR. PLACITELLA:

14          Q. Have you examined the issue about  
15          what Engelhard and BASF paid to their  
16          outside lawyers to defend the talc  
17          litigation?

18          MR. FARRELL: Objection to form,  
19          foundation. I'll further note that  
20          BASF has asserted an objection and a  
21          response to this subject matter based  
22          on an order that has already been  
23          issued by the Court on this subject  
24          matter.

25          THE WITNESS: I can't -- I

1 realize it was one of the designated  
2 issues. I can't add anything to what  
3 counsel has said. That was the  
4 discussion that we had, that there's  
5 currently a court order requiring the  
6 development of an estimate of what it  
7 would take and cost to do that.

8 BY MR. PLACITELLA:

9 Q. All right. Do you have any  
10 information on the -- how burdensome that  
11 would be?

12 MR. FARRELL: Objection to form,  
13 foundation, beyond the scope.

14 THE WITNESS: Right now, I don't.  
15 I know -- again, I've talked to  
16 counsel about it. And they're just at  
17 the point where they're starting to  
18 consider the, you know, the IT costs  
19 and the costs of looking into files  
20 and pulling information, trying to  
21 pull together information.

22 So I have no information to add  
23 to that.

24 BY MR. PLACITELLA:

25 Q. Do you have information that some

1 of that information would be in electronic  
2 form versus going into individual files?

3 MR. FARRELL: Objection to form,  
4 foundation, beyond the scope.

5 THE WITNESS: I don't know that  
6 we know enough about it yet to be able  
7 to answer it. I don't know enough.

8 BY MR. PLACITELLA:

9 Q. Have you asked?

10 A. Yes.

11 Q. Okay. And you don't know whether  
12 it's in a database of some form, or  
13 accounting program or anything like that?

14 MR. FARRELL: Objection to form,  
15 foundation, asked and answered.

16 THE WITNESS: There, there is the  
17 Kevin Woods affidavit where he talks  
18 about the issues associated with  
19 trying to pull that information  
20 together.

21 There have been electronic  
22 databases in the past. But I don't  
23 know that we know enough yet to know  
24 whether the information is even in  
25 there, whether it can be accessed. I

1 think there's a lot of unknowns still.

2 BY MR. PLACITELLA:

3 Q. Okay. It's good when lawyers are  
4 flipping the pages. That means they're  
5 usually pretty close to done.

6 In your interrogatory answers you  
7 mention that Johnson and Johnson was  
8 involved in constructing the Ashton  
9 affidavit. Do you have any information  
10 under the circumstances -- of those  
11 circumstances?

12 MR. FARRELL: Objection to form,  
13 foundation, beyond the scope of the  
14 notice.

15 THE WITNESS: I don't personally  
16 recall at this point. I think that  
17 would be better directed toward Cahill  
18 employees since they were the people  
19 involved. I don't remember any  
20 specific information.

21 BY MR. PLACITELLA:

22 Q. Okay. I assume you're not the  
23 person to ask -- although part of this was  
24 about a factual basis -- but assume you're  
25 not the person to ask of, about the

1 specifics of what was included in the Ashton  
2 affidavit and why?

3 MR. FARRELL: Objection to  
4 form --

5 BY MR. PLACITELLA:

6 Q. That's not something you have  
7 knowledge of?

8 MR. FARRELL: Objection to form,  
9 foundation.

10 THE WITNESS: Well, that was,  
11 that was a legal analysis that is  
12 privileged that I don't have access  
13 to. It was a legal analysis that  
14 looked at scientific information,  
15 analytical information, as well as  
16 other issues that they would have to  
17 incorporate into a legal analysis.

18 I don't know what was in it, so I  
19 wouldn't be able to answer questions.

20 BY MR. PLACITELLA:

21 Q. Well, that's what I'm asking you.  
22 So you're not the person to ask those  
23 questions to on behalf of the corporation,  
24 why and if certain information was included  
25 in the Ashton affidavit?

1 MR. FARRELL: Objection to form,  
2 foundation, beyond the scope of the  
3 notice.

4 THE WITNESS: My understanding is  
5 it's privileged.

6 BY MR. PLACITELLA:

7 Q. Your understanding is why certain  
8 information was included in the Ashton  
9 affidavit is privileged?

10 MR. FARRELL: Same objections,  
11 form, foundation, beyond the scope of  
12 the notice.

13 BY MR. PLACITELLA:

14 Q. I just want to make sure I've got  
15 that right.

16 A. My understanding, that  
17 whenever -- whatever went into the legal  
18 analysis is privileged.

19 Q. Just so -- I want to be clear  
20 because when we come to trial, I don't -- I  
21 want to make sure questions I don't ask you.

22 You don't have any information  
23 about why Ashton included the information in  
24 his affidavit and excluded other; correct?

25 MR. FARRELL: Objection to form,

1 foundation, beyond the scope of the  
2 notice, asked and answered.

3 THE WITNESS: I was not there. I  
4 don't have any detailed information on  
5 why or how that was done.

6 MR. PLACITELLA: Okay. Well, I  
7 think subject to other people asking  
8 you questions, which may resurrect  
9 something in my mind, I'm done; and I  
10 appreciate your time.

11 THE WITNESS: Thank you.

12 MR. FARRELL: No questions for  
13 BASF.

14 MR. BOISE: No questions. No  
15 resurrection.

16 THE VIDEOGRAPHER: The time is --

17 MR. PLACITELLA: Hold on.  
18 There's people on the phone.

19 MR. BOYLE: No questions for  
20 Dornbusch.

21 MR. PLACITELLA: Okay. Eric, you  
22 still there?

23 THE VIDEOGRAPHER: The time is  
24 now 6:58 p.m. This concludes the  
25 deposition of Daniel Steinmetz. We're

1 going off the record.

2 (Deposition concluded at 6:58

3 p.m.)

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1 C E R T I F I C A T I O N

2

3

4 I, ADAM D. MILLER, Registered  
5 Professional Reporter, certify that the  
6 foregoing is a true and accurate transcript  
7 of the foregoing deposition, that the  
8 witness was first sworn by me at the time,  
9 place and on the date herein before set  
10 forth.

11 I further certify that I am  
12 neither attorney nor counsel for, not  
13 related to nor employed by any of the  
14 parties to the action in which this  
15 deposition was taken; further, that I am not  
16 a relative or employee of any attorney or  
17 counsel employed in this case, nor am I  
18 financially interested in this action.

19

20

21 \_\_\_\_\_

22 Adam D. Miller

23 Registered Professional Reporter

24 and Notary Public

25

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